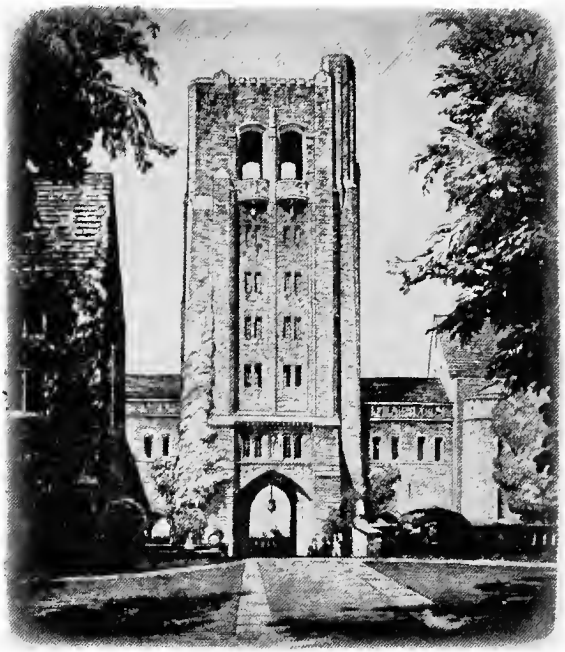
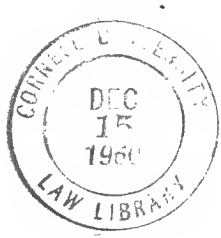
Sir John Fortescue's Commendation Of The Laws Of England





SIR JOHN FORTESCUE'S COMMENDATION OF THE LAWS OF ENGLAND

THE TRANSLATION INTO ENGLISH

OF

"DE LAUDIBUS LEGUM ANGLIÆ"

BY

FRANCIS GRIGOR

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SIR JOHN FORTESCUE,

CHIEF JUSTICE OF THE KING'S BENCH, 1442.

"The county of Devon is justly proud of Sir John Fortescue as one of its worthies: in Westminster Hall his name is still regarded with reverence; and his principal work '*De Laudibus Legum Angliæ*,' after more than three centuries, is referred to as the first treatise that entered minutely into the history of our legal institutions and described the professional education and habits of the period. The works of his three predecessors, Glanville, Bracton, and Hengham, were no doubt more useful to the legal student and forensic practitioner; but that of Fortescue offered greater attractions to general readers by its popular form and its historical details: and the consequence is that while the former have become almost obsolete, the latter is still read with interest by the curious and philosophical enquirer.

"The family traces its origin, without the loss of a single link, to the knight who bore the shield before William the Norman on his invasion of England; the assumed name commemorating the fact. His son Sir Adam, who

was with him in the battle, remaining in this country, received as the reward of their joint services, among other lands, the manor of Wimondeston or Winstone, in the parish of Modberry, Devon. King John confirmed the grant, and it remained in possession of the family till the reign of Queen Elizabeth.

"Two accounts are given of the judge's actual parentage; but discarding that which makes him the son of Sir Henry Fortescue, the chief justice of the King's Bench in Ireland from June 1426 to February 1429, who was really his brother, the most probable seems to be that his father was Sir John Fortescue, knighted by Henry V. for his prowess in the French Wars, and made governor of Meaux, which he had helped to reduce. This knight was a second son of William Fortescue of Winstone, and was himself seated at Shepham. He married Joan, the daughter and heir of Henry Norreis of Norreis, in the parish of North-Huish, in Devonshire, by whom he had several children; the two elder being the above-mentioned Sir Henry, the Irish chief justice, and Sir John, who obtained the same rank in England.

"John Fortescue is supposed to have been born at Norreis, the estate of his mother. The date of his birth is uncertain; but looking at that of his call to the degree of the coif, it must have been about the close of the fourteenth

century. He received his education, according to Bishop Tanner, at Exeter College, Oxford; and it is certain that he pursued his legal studies at Lincoln's Inn, where we find him one of the governors of the house from 1424 to 1429. In Michaelmas Term of the latter year he was summoned to take upon him the degree of a serjeant-at-law; and it is curious that his name does not appear in the Year Books till the same date; a fact which is observable with regard to several other persons of eminence at this period, and probably shows that their previous practice was confined either to the provinces, or to the courts of King's Bench and Chancery, of which the reports are comparatively few in number. From that time his arguments frequently occur: in 18 & 19 Henry VI. we find him acting as a judge of assize on the Norfolk circuit; and at Easter in the latter year, 1441, he was named one of the king's serjeants.

"So conspicuous were his merits that, on the death of Sir John Hody in the next year, he was, without taking any intermediate step, raised to the office of chief justice of the King's Bench on January 25, 1442 (20 Henry VI.). In that court we have proof from the Year Books that he presided till Easter Term 1460 (38 Henry VI.); and no new chief justice is recorded until Edward IV. a few months afterwards seized the throne.

"His salary on his appointment was 180 marks (£120) a year, besides £5 16s. 11d. for a robe at Christmas, and £3 6s. 6d. for another at Midsummer. In addition to this, he received in the following February a grant for life of one dolium of wine annually; to which a second was added in the next year. These two dolia (tunnes) of wine are expressly reserved to him by the act of resumption in 34 Henry VI. In March 1447, £40 a year was granted to him beyond his former allowances.

"From a letter in the *Paston Correspondence* dated January 1443, we find that the assizes were sometimes held in the winter, and that in the year following his elevation those at East Grinstead in Sussex were obliged to be discontinued 'pour noun venu dez Justicez,' because he 'had a sciatica that letted him a great while to ride, and he dare not yet come on none horse's back'; and his colleague, Sir William Paston, was also too ill to go. The letter adds that 'as for the remanent of the assizes he shall purvey to be there by water'; showing that the use of any land carriage was not then thought of.

"It has been a question how far Sir John Fortescue was justified in calling himself, as he does in the title to his work '*De Laudibus*,' *Cancellarius Angliæ*, a title which he reiterated in his retractation of what he had written against the House of York, by making the

interlocutor in the dialogue say to him, 'considering that ye were the chief chancellor to the said late king.'

"Let us then follow him in his career, and see at what time he could have received the office after Easter 38 Henry VI. (1460), up to which time we have seen that he acted in the King's Bench.

"The fatal battle of Northampton was fought on July 10, 1460, and three days before it the Chancellor Waynflete resigned the Seals in the King's tent on the field. Fortescue was clearly not appointed then; for the Seals were in the custody of Archbishop Bourchier on the 25th of that month, when the king delivered them to George Neville, Bishop of Exeter, the new chancellor. A parliament was held in the following October, which was opened by that prelate as Chancellor of England. Fortescue does not appear in that parliament in his usual place as a trier of petitions; but neither does Prisot, the chief justice of the other bench. Of the four judges who were among the triers of petitions, only one, John Markham, was of the Court of King's Bench; of whom there is no evidence whatever to show that he became chief justice till the next reign.

"In that parliament all the judges were called upon, and refused, to give their opinion on the claim of the Duke of York; but as none of them are named, we are unable to say

whether Fortescue was among them. Henry continued under the control of his enemies till February 17, 1461, the second battle of St. Albans; and his reign practically expired on March 4, when Edward assumed the throne. At the battle of Towton, on Palm Sunday, March 29, Fortescue was present, and, when the field was lost, fled with King Henry. That unfortunate monarch went first into Scotland, then into Wales, and afterwards lay concealed in the north of England until he was betrayed and taken to the Tower of London in June, 1465. There he remained in durance till his temporary restoration in October, 1470. During this period the Great Seal remained in the hands of Bishop Neville till June, 1467; and then was transferred to those of Bishop Stillington; so that, without its possession, any appointment of Sir John Fortescue would have been merely illusory, and in fact could only have been legitimately recognised if made between February 17 and March 4, 1461. During the six months of Henry's renewed reign, from October 1470 to April 1471, it is certain that Fortescue did not hold the post; as Neville, then Archbishop of York, is expressly mentioned as chancellor. We can therefore only conclude his title to be a nominal one, given during the exile of Henry; and must concur in the dictum of Chief Justice Finch, rather oddly introduced into his argument upon shipmoney

in the reign of Charles I., that Fortescue was never actual Chancellor of England.

"In the first parliament of Edward IV. Fortescue was attainted of high treason as one of those engaged in the battle of Towton, and all his possessions were forfeited to the king, who granted part of them to Lord Wenlock. The inquisition of his property was not completed till the seventh year, under which it is inserted; occasioning some writers erroneously to date his attainder then. He clearly was at some time in Scotland, going there probably with King Henry; for in his petition to King Edward some years afterwards he refers to the works he had written against his title to the crown 'in Scotland and elleswhere.' We find him next, about 1463, with the queen and prince, but without the king, 'at Seynte Mighel in Barroys' (in Lorraine), from which place he addressed a letter to the Earl of Ormond, then in Portugal, in which he describes himself not as chancellor, but simply as one of the knights who were there with the queen. They must all have been much straitened for the means of living; for he says, 'we buth all in grete poverte, but yet the quene susteyneth us in mete and drinke, so as we buth not in extreme necessite.' It is dated on December 13, and accompanies a letter from Prince Edward to the same nobleman, who was then in Portugal, pressing him to urge the king of that country

'for the forderance and setyng forth of my lord (King Henry) in the recuvering of his ryght, and subduing of his rebellis.' He remained in Lorraine for some time; and it was probably while there that he composed his learned work '*De Laudibus Legum Angliæ*' for the instruction of the young prince.

"From this time we have no positive account of his movements till his return with the queen to England in 1471; nor is his name mentioned in any way during the six months of Henry's renewed reign. His age did not prevent him, as we learn from Warksworth, from being present at the battle of Tewkesbury on May 4, 1471, where he was taken prisoner; but it no doubt exempted him from suffering under the subsequent execution of the Lancastrians. His royal master and his princely pupil being now both dead, no hope could remain for the party to which he had been devoted. Further opposition, therefore, to the ruling powers would have been fruitless; and the desire of peace for the short remainder of his life, and of obtaining a restoration of his property for his family, was probably all that could now influence him. These feelings no doubt operated to produce the retractation, spoken of by Selden, of all he had previously written against Edward's title; and this, it is apparent on the record, was one of the causes of that monarch's reconciliation with him, and of

the reversal of his attainder in October 1473 (13 Edward IV.), between two and three years after the conclusion of the contest.

"How long he lived afterwards is very uncertain. The only further recorded notice of him is at the end of the fifteenth year of the reign (February 1476), when he delivered into the Exchequer an assize that had been taken before him while chief justice. He is stated to have been ninety years of age when he died; but the knowledge of this fact seems to be inconsistent with the ignorance of the date of its occurrence. Over his remains at Ebrington, in Gloucestershire, is a tomb on which he is represented at full length in his robes as chief justice. His seat there, which he purchased in 35 Henry VI., still belongs to the family."—Foss—*The Judges of England*, vol. iv. pp. 308–14.

"But for the Wars of the Roses, and but for the fact that Fortescue, unlike his brethren, took a side in those wars, we should probably only know him, as we know most other lawyers of this period, as giving certain decisions and arguing certain cases. His exile made him a diplomat and a statesman. He was at leisure to reflect from the outside upon the condition of his country and upon its system of law, in the study and administration of which he spent

the greater part of his life. It is for this reason that his works possess so unique a value. They are the writing not only of a contemporary and a party man, but also of a lawyer who had been at the centre of affairs in many various spheres of activity. He shares with Bentham the fame of being at once a lawyer and a practical political philosopher. Both men clearly saw some of the evils from which their own age suffered. Both suggested the remedies which were successfully adopted by the age which followed.

The '*De Laudibus Legum Angliæ*' was written at St. Mighel for Prince Edward. It is in the form of a dialogue between Fortescue and the prince. Fortescue's design is to instruct the prince in the leading characteristics of the laws of the country over which he is one day to rule. He explains to the prince the difference between an absolute and a limited monarchy, illustrating his theme by taking France and England as the types of these two forms of rule. He then goes on to compare the English common law with the civil law, greatly to the advantage of the former. Indeed, it is to these characteristic differences that he ascribes all the superiority of Englishmen—a form of political speculation in which he has not wanted for imitators from that day to this. As part of his description of English law he gives us our earliest account of the Inns of Court, legal

education, and the ranks of the legal profession. In his description of the law he purposely abstains from technical details. He explains certain elementary doctrines of the common law, and gives an account of some of its most salient features. It is just because it was written to instruct one who was not a lawyer, and never intended to become a lawyer, that it contains information which, being well known to all contemporary lawyers, we get from no other legal writer. It is probably the first legal book which was avowedly written to instruct a layman in the elements of law. The consequent lucidity of its style, together with the unique character of the information it contains, explain why it has always been among lawyers the most popular of Fortescue's works."—HOLDSWORTH, *History of English Law.*

INTRODUCTION.

During that impious and unnatural Civil War between the Houses of *York* and *Lancaster*, which not long since raged in *England*, and by means whereof their Sovereign King *Henry* VI. with his Consort Queen *Margaret*, who was daughter of the King of *Jerusalem* and *Sicily*, and their only son *Edward* Prince of *Wales*, were obliged to quit the kingdom: and at last, the King, being taken prisoner by his subjects, suffered a very long and terrible imprisonment. But the Queen, with her son, being thus banished, made her abode in the dutchy of *Berry*, which at that time belonged to her father, the King of *Jerusalem*.

The Prince, as he grew up to man's estate, applied himself wholly to martial exercises; and being often mounted on fiery and wild horses, which he did not fear to urge on with the spur, made it his diversion, sometimes with his lance, sometimes with his sword, or other weapons, to attack and assault the young gentlemen his attendants, according to the rules of military discipline: which a certain grave old knight, his father's Chancellor, at that time in banishment with him, perceiving, thus accosts the Prince:

DE LAUDIBUS

LEGUM ANGLIÆ.

CHAP. I.

The Chancellor exhorts the Prince to the Study of the Laws.

I AM right glad, most serene Prince, at that worthy genius of your's, whilst I observe with how great an inclination you employ yourself in such manly and martial exercises; which become you, not so much as you are a soldier, as, that one time or other, you will be our king. For it is the duty of a king to fight the battles of his people, and to judge them in righteousness, (1 Kings viii. 20.) Wherefore, as you divert and employ yourself so much in feats of arms, so I could wish to see you zealously affected towards the study of the laws; because, as wars are decided by the sword, so the determination of justice is effected by the laws: which the emperor *Justinian* wisely considering, in the very beginning of the Introduction to his Institutes, says, "It is not only incumbent upon the Imperial majesty to be graced with arms, but also to be fenced about with the laws: that he may know how to govern aright, both in times of peace and of war."

As an inducement to set yourself in good earnest about the study of the laws, the greatest lawgiver of his time, *Moses*, formerly chief of the congregation of the people of *Israel*, invites you more effectually than *Justinian*, when, by divine inspiration, he commands

the kings of *Israel*, to read the laws all the days of their life, saying thus: "It shall be when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book, out of that which is before the *priests*, the *Levites;* and it shall be with him, and he shall read therein all the days of his life, that he may learn to fear the Lord his GOD, to keep all the words of this law, and these statutes, to do them," (Deut. xvii. 18, 19.) *Helynandus*, upon the place, says, "A prince therefore ought not, neither is he permitted, under the pretence of his duty as a soldier, to be ignorant of the laws.—A little after he is commanded to take a copy of the law from the *priests* and *Levites*, that is, from catholic and learned men." Thus he. *Deuteronomy* is the book of laws whereby the kings of *Israel* were obliged to govern the people committed to their charge: *Moses* commands their kings to read this book, that they may learn to fear the Lord their GOD, and keep his statutes which are written in the law. Behold, to fear GOD is the effect of the law, which a man cannot attain to, unless he first know the will of GOD as it is written in the law. For, the principal, the chief point of obedience, is to know the will of that Master whom we are to serve and obey: and yet *Moses* here in this edict of his, mentions the effect of the Law first, *viz.* The fear of GOD, and then exhorts to the keeping the commands of GOD, which are the cause of that fear; for the effect is always prior to the cause in the intention of the person who exhorts.

But what kind of fear is that which the laws propose to the keepers thereof? Sure, it cannot be that fear, of which it is written (1 John iv. 18.) that perfect love casteth out fear. Yet that fear, though it seems a servile fear, often stirs up kings to read the laws. But this is not the effect of the law: the fear which *Moses* here intends, and which the laws produce,

is that described by the prophet, "The fear of the Lord is clean, enduring for ever," (Psalm xix. 9.) This fear is filial and quite excludes that servile dread and horror, which *that* hath which is cast out by love. This proceeds from the laws, which teach to do the will of GOD, in the doing whereof we shall escape all punishment. "The glory of the LORD (say the *Scriptures*) is upon them that fear him, whom also he glorifieth:" in a word, this fear is the same which *Job* speaks of, when, after he had turned his thoughts many ways in search after wisdom, he gives us this, as the result of his enquiry; "Behold the fear of the LORD, that is wisdom, and to depart from evil is understanding," (Job xxviii. 28.) to depart from evil, the *laws* teach and caution; *whereby* they also produce that fear of GOD, which is the true wisdom.

CHAP. II.

The Prince's Answer.

WHEN the Prince heard this, looking very intently at the old knight, he replied, I know, good Chancellor, that the book of *Deuteronomy* is a part of the Holy Scriptures, that the laws and ceremonies contained therein are of divine institution and promulgated by Moses; upon which account the reading of them is matter for a pious and devout contemplation: but the Law, to the study and understanding whereof you now invite me, is merely human, derived from human authority, and respects this world: wherefore, though *Moses* obliged the kings of *Israel* to the reading of the *Deuteronomical* law, it does not thence reasonably follow, that by the same rule he invites all other kings to do the like as to the laws of their respective dominions: the reason of the study of the one, and of the other, is not strictly the same.

CHAP. III.

The Chancellor enforceth his Exhortation.

Chancellor. I OBSERVE, most excellent Prince, from your reply, with what care and attention you weigh the nature of my advice, which encourages me very much, not only to explain more clearly, but to enter somewhat deeper into the matters I have begun and proposed to you; be pleased to know then, that not only the *Deuteronomical*, but also all human laws are sacred; the definition of a law being thus, "It is an holy sanction, commanding whatever is honest, and forbidding the contrary." And that must needs be holy, which is so in its definition. The law or right is also defined "to be that, which is the art of what is good and equal;" or, the law considered as a science or profession, may aptly be defined in the same manner.

Whence we, who are the ministerial officers, who sit and preside in the Courts of Justice, are therefore not improperly called, *Sacerdotes*, (Priests). The import of the latin word (*Sacerdos*) being one who gives or teaches holy things; and such are all laws which are solemnly enacted and promulgated, though made by men: seeing the *Apostle* says, (Rom. xiii. 1.) that all power is from GOD.

Laws which are made by men, (who for this very end and purpose receive their power from GOD) may also be affirmed to be made by GOD, as saith the author of a book, going under the name of *Auctor Causarum*, whatsoever the second cause doth, that doth the first cause, but in a more excellent manner. Wherefore king *Jehoshaphat* says to his judges, (2 Chron. xix. 6.) "Take heed what you do, for ye judge not for man, but for the Lord, who is with you in the judgment:" whereby you are instructed, that to study the laws,

though of human institution, is in effect to study the laws of GOD; which therefore cannot but afford a pious and devout entertainment.

But neither was it out of devotion only (as you rightly judge) that *Moses* commanded the kings of *Israel* to read the book of *Deuteronomy* rather than any other part of the *Pentateuch*, since all of them abound in matter for a devout and holy contemplation; to meditate on which is the part of every good man: the true reason of this command is, that in the book of *Deuteronomy*, the laws, whereby the kings of *Israel* were obliged to govern their subjects, are more expressly, more explicitly particularized than in any other of the books of the Old Testament, as the circumstances of the command do plainly evince.

Wherefore, my prince, the same cause does no less exhort you than the kings of *Israel*, that you ought to be a studious enquirer into those laws, whereby you may be hereafter qualified to govern your subjects. For, what is said to the kings of *Israel* must be figuratively intended to be spoken to every king who bears rule over a people, who know and worship the true GOD. Upon the whole, could anything be more fitly or more usefully offered to your consideration, than this command enjoined to the kings of *Israel*, to read and study their law? Since, not only the example, but the typical authority thereof instructs and obliges you to behave conformably to the laws of that kingdom, to the crown whereof, with the permission of Divine Providence, you are in due course of time apparently to inherit.

CHAP. IV.

He proves that a Prince by the Laws may be made happy.

THE Laws, my dear Prince, do not only, with the Prophet, saying, "Come, ye children, hearken unto me, I will teach you the fear of the Lord," (Ps. xxxiv. 11.) call on you to fear GOD, whereby you may become wise; but the same laws also invite you to be exercised in them, that you may attain to felicity and happiness (as far as they are attainable in this life). For all the *philosophers*, who have argued so differently about happiness, have agreed in this, that happiness is the end of all human desires, for which reason they call it the *summum bonum*, the greatest or chief good: the *Peripatetics* placed it in virtue; the *Stoics* in what is honest; and, the *Epicureans* in pleasure: but, inasmuch as the *Stoics* defined that to be honest which is done well and laudably, according to the rules of virtue; and the *Epicureans* asserted that nothing is or can be pleasant without virtue; all those sects, according to *Leonardus Aretinus*, in his Introduction to Moral Philosophy, have concurred in this, that it is virtue alone which procures and effects happiness, wherefore *Aristotle*, (Lib. 7. *Polit.*) defining happiness, says, "That it is the perfect exercise of all the virtues. This being granted, I desire you to consider what will follow from these premisses.

Human laws are no other than rules whereby the perfect notion of justice can be determined: but that justice, which those laws discover, is not of the commutative, or distributive kind, or any one particular distinct virtue, but it is virtue absolute and perfect, and distinguished by the name of *Legal Justice*, which the same *L. Aretinus* affirms to be therefore perfect, because it utterly rejects and discountenances what-

ever is vicious, and *teaches an universal virtue*, for which it is deservedly called, *simply*, by the name of virtue in the general; concerning which thus *Homer* and *Aristotle*, It is the most excellent of all the virtues, and that nor morning nor evening star is so bright or lovely as this.

This justice is the subject of the royal care, without which a king cannot act in his judicial capacity as he ought to do, and without which he cannot justly engage in any war: but this being once attained and strictly adhered to, the whole regal office will, in all respects, be adequately and completely discharged; so that (to sum up what we have said) happiness consists in the perfect exercise of all the virtues; and since that justice which is taught and acquired by the law, is universal virtue, it follows, *that he who has attained this justice, is made happy by the laws*, consequently has attained the *summum bonum*, or beatitude, since that and happiness in this fleeting life mean the same thing.

Not that the law itself can do this exclusive of divine grace: nor will you be able to learn either what is law or virtue without it, not so much as in the inclination to it. For, as *Parisiensis* says, "The internal appetitive virtue of man is so vitiated by original sin, that vicious practices relish pleasantly, and the works of virtue seem harsh and difficult." Wherefore, that some give themselves up to admire and follow virtue, is owing to the grace of GOD, and not their own natural strength or uprightness of disposition.

May I not now ask the question, Whether the laws, which through the divine concurrence work such good effects, as I have laid before you, are not to be studied with the utmost application? since he, who hath a just notion of them, is in the way to arrive at that felicity, which, according to the *philosophers*, is the

end and completion of all human desires, and the *chief good* of this life.

Though what I have hitherto offered is of general consideration only, and therefore may not seem to concern you, as you are heir apparent to a Crown; yet, the words of the Prophet lay an obligation on you, even in that capacity, to apply yourself to the study of the law, when he says, "Be instructed, ye judges of the earth," (Ps. ii. 10.) The Prophet does not here persuade to the learning of any mechanical art or trade, nor yet of any science in theory, how proper or beneficial soever to mankind; for he does not say in general, Be instructed, ye inhabitants of the earth, but addresses himself in a particular manner to the kings, or rulers of this world; and exhorts them to the study of the law, according to which they ought to administer justice and judgment to their people: "Be instructed, ye judges of the earth."—It follows, lest at any time the LORD be angry, and ye perish from the right way." Neither, great Sir! do the Scriptures only oblige you to be instructed in the laws, by which justice is to be learned and attained, but in another place gives it you in charge to love justice herself, saying, "Love righteousness, ye that be judges of the earth." (Wisd. Solomon i. 1.)

CHAP. V.

Ignorance of the Laws causes a Contempt thereof.

BUT, Sir! how will you love righteousness, or justice, unless you first acquire a competent knowledge of the laws, by which justice is to be learned and known: for, as the *philosopher* says, "Nothing is admired or loved unless it be known," which made the orator *Fabius* say, "That it would be well with the arts and sciences, if artists only were to make a judg-

ment of them." What is not known, is so far from being loved, that it is usually despised, as saith a certain poet,

The Rustic what he knows not always slights.

Nor is this the way of the clown only, but of men of learning and skill in the liberal arts and sciences. Suppose (for instance) a natural *philosopher*, who had never studied either the Mathematics, or Metaphysics, should be told by a *Metaphysician* that his science considers things abstracted from all matter and motion, both as to their *essence or reality*, and as to our conception of them: the *Mathematician* asserts, that his science considers things in reality conjoined to matter and motion, but separated from them in our conception: it is certain that our *Naturalist*, who was never acquainted with any thing separated from matter and motion, either in reality or conception, would not forbear laughing at both of them, and would be apt to despise their respective sciences, though of a sublimer nature than his own; and that for no other reason, but because he is perfectly unacquainted with them. So (my Prince) would you in like manner be surprised at a lawyer who should assert, that one brother shall not succeed in the father's inheritance to another brother, who is not born of the same mother, but that the inheritance shall rather descend to the sister of the whole blood, or it shall come to the lord of the fee by way of *escheat:* you would be surprised (I say) at this, as not knowing the reason of the law in this particular case. Whereas the seeming difficulty of this case gives no perplexity at all to such as are skilled in the common law of *England:* which confirms the vulgar saying, "The arts and sciences have no enemy but the unlearned."

But far be it, my Prince, that you should prove averse, or an enemy to the laws of that country to which you will in time inherit by right of succession,

when the above cited text of Scripture instructs you to love righteousness. Wherefore, most noble Prince, permit me again and again to importune and beseech you to inform yourself thoroughly in the laws of your father's kingdom, not only that you may avoid the inconveniences I have mentioned, but because the mind of man, which has a natural propensity to what is good, and can desire nothing but as it has the appearance of good, as soon as by instruction it comes to a perfect knowledge of that good, it rejoices, takes pleasure therein, and as it improves by reflections, the pleasure grows more and more; from whence you may infer, that when you come to be instructed in those laws, to which you are at present a stranger, you will most certainly affect and love them, because they are excellent in their nature and reason; and the more you know of them, the more will you be entertained and pleased.

For what is once loved does by use transform the person into its very nature, according to the *philosopher*, "Use becomes a second nature." So the cion of a pear-tree grafted on an apple-stock, after it has taken, draws the apple so much into its nature, that both become a pear-tree, and are called so from the fruit which they produce. So, virtue put in practice grows into a habit, and imparts its very name to those who practice it: as we say of one who is indued with *modesty*, *continence* or *wisdom*, that he is *modest*, *continent*, *wise*. So you (my Prince) when you shall have practised justice with delight and pleasure, and have, as it were, transcribed the law, with the rule of justice, into your very habit and disposition, will deservedly obtain the character of a just prince. And, as such, be saluted with those agreeable words of the *Psalmist*, "Thou lovest righteousness, and hatest wickedness, therefore GOD, thy GOD, shall anoint thee with the oil of gladness above thy fellows," (Ps. xlv. 7.)

CHAP. VI.

A Repetition of his Exhortation.

And now, most gracious Prince, are not these arguments, which I have offered, abundantly sufficient to induce you to the study of the law? Since thereby you will acquire a habit of justice, be honoured with the name and character of a just prince; not to say, that you will thereby also avoid the imputation and disgrace which attends ignorance; and moreover you will thereby attain to (*that*, which all men covet after) *happiness*, as far as it is attainable in this life; and through that fear of God which is the truest wisdom, and that charity or love of God which, in the peace and satisfaction of it, passes all understanding, being, as it were, united to the best and greatest Being, the fountain of all happiness and perfection, you will become (to use the Apostle's expression) one spirit with him.

But, because these things (as I said) cannot be wrought in you merely by the law, without the special assistance of divine grace, it is necessary that you implore for that above all things; as also that you search diligently into the knowledge of the divine law, as contained in the Holy Scriptures. For *Holy Writ* saith, "Vain are all men by nature who are ignorant of God," (Wisd. Solomon xiii. 1.) I advise you, therefore, my Prince, that whilst you are young, and your soul is, as it were a virgin-table, a blank space, you write it full with such things as I have above hinted at, lest afterwards it be more pleasantly, though delusively filled with characters of little or no importance, according to the saying of a certain author:

The vessel its first tincture long retains.

What mechanic is there so inattentive to the advantage of his child, as not to instruct him in his

trade while he is young, whereby he may afterwards gain a comfortable subsistence. So the carpenter teaches his son to handle the axe; the smith brings up his at the anvil; a person designed for the sacred office of the ministry is bred, in a liberal way, at school: *so it becomes a king* to have his son (who is to succeed him) *instructed in the* laws of his country whilst he is yet young. Which rule, if kings would but observe, the world would be governed with a greater equality of justice, than now it is. And, if you please to follow the advice I give, you will show an example of no small consequence to other princes, persons of the same high rank and distinction with yourself.

CHAP. VII.

The Prince yields his Assent, but proposes his Doubts.

THE Chancellor having ended, the Prince began as follows: You have overcome me, good Chancellor, with your agreeable discourse; and have kindled within my breast a more than ordinary thirst after the knowledge of the law. There are two things, nevertheless, which make me fluctuate, so that, like a ship in a storm, I know not which way to direct my course. One is, when I recollect how many years students of the law are taken up, before they arrive at any competent knowledge of it: which discourages me, lest I employ all my younger years in like manner: another thing is, whether to apply myself to the study of the laws of *England*, or of the *Civil Laws*, which are so famous throughout the universe: for a kingdom ought to be governed by the best of laws, according to *the philosopher*, nature always covets what is best. Wherefore I would willingly attend what you advise in this matter. To whom the *Chancellor:* Sir! there is no such mystery in these

things, as to require abundance of deliberation; and therefore I shall give you my thoughts upon the matter without keeping you in suspense.

CHAP. VIII.

Such a Knowledge of the Law as is necessary for a Prince is soon to be acquired.

THE *philosopher*, in the first of his Physics, says, "'Tis supposed that we then know every thing, when we apprehend the causes and principles thereof as high up as the first elements:" upon which the *Commentator* observes, that by principles, *Aristotle* meant the efficient causes, that by causes, the final causes are intended, and by elements the matter and form: now in the laws there are not, properly speaking, matter and form, *these* being what go to the composition of natural things; but something analogous to it however, *viz.* certain elements, out of which they arise, as *Customs*, *Statutes*, or *Acts of Parliament* and the *Law of Nature:* whereof the laws of particular kingdoms consist, as natural things do of matter and form; what we read or write consists of letters which are called the elements of Reading and Writing. As for the *Principia*, which the Commentator calls the efficient causes, these are no other than certain *Universalia*, which the learned in the law, as well as mathematicians, call Maxims, in rhetoric they are called *Paradoxes*, the civilians call them *Rules of Law*. They are not discoverable by stress of arguments or logical demonstrations, but as is said (secundo *posteriorum*) by induction, by the assistance of the senses and the memory: wherefore, in the first of his Physics, *Aristotle* has it, that "principles are not made up of other things, nor one of another. But other things proceed from them;" wherefore, accord-

ing to the same author, the first of his topics, it is, that "every principle carries its own evidence with it, so that there is no disputing with those who deny first principles:" because, as the same *philosopher* writes in the first of his Ethics, "Principles do not admit of proof by reason and argument."

Whosoever therefore desires to get a competent understanding in any faculty of science, must by all means be well instructed in the principles thereof. For, by reasoning from these principles, which are universally acknowledged and uncontested, we arrive at length at the final causes of things. So that, whoever is ignorant of these three, the principles, causes and elements of any science, must needs be totally ignorant of the science itself; on the other hand, when these are known, the science itself is known too, at least in general and in the main; though not distinctly and completely.

So we judge that we know the law of GOD, in knowing what is faith, hope, charity, the sacraments and GOD'S commandments: leaving other mysteries in Divinity to those who preside in the Church. Wherefore, *our blessed Saviour* says to his disciples, "Unto you it is given to know the mysteries of the kingdom of GOD, but to others in parables, that seeing they might not see, and hearing they might not understand." And *the Apostle* cautions, "Not to think of one's self more highly than we ought to think," (Rom. xii. 5 and 16.) And, in another place, "not to mind high things, not to be wise in our own conceits."

So, my Prince, there will be no occasion for you to search into the *arcana* of our laws with such tedious application and study; it will be sufficient, as you have made some progress in grammar, to use the same method and proportion in the study of the laws. As to grammatical learning, which consists of *Etymology*,

Orthography, *Prosodia* and *Syntax*, as so many springs or fountains running together to complete it; you are not so perfect a master, it is true, as to be acquainted with all the particular rules and exceptions comprehended under each of these; but yet that general knowledge of grammar, which you have acquired, is sufficient for your purpose, from whence you may be justly stiled, *a grammarian.*

In like manner you may be deemed a lawyer in some competent degree, when, as a learner, you shall become acquainted with the principles, causes and elements of the law. It will not be convenient by severe study, or at the expence of the best of your time, to pry into nice points of law; such like matters may be left to your judges and counsel, who in *England* are called *Sergeants at Law*, and others well skilled in it, whom in common speech we call Apprentices of the law: *you will better pronounce judgment in your courts by others than in person: it being not* customary for the kings of *England* to sit in court, or pronounce judgment themselves; and yet they are called *the King's judgments*, though pronounced and given by others: as *Jehoshaphat* asserted, that "they judged not for man, but for the Lord, who was with him in the judgment," (2 Chron. xix. 6.)

Wherefore, most gracious Prince, you will soon, with a moderate application, be sufficiently instructed in the laws of *England*, if so be you give your mind to it. *Seneca*, in an epistle to *Lucillus*, says, "There is nothing but what great pains and diligent care will get the better of." I know very well the quickness of your apprehension and the forwardness of your parts; and I dare say, that in those studies, though a knowledge and practice of twenty years is but barely sufficient to qualify for a judge, you will acquire a knowledge sufficient for one of your high quality, within the compass of one year; and in the mean

while attend to, and inure yourself to martial exercises, to which your natural inclination prompts you on so much, and still make it your diversion, as shall best please you, at your leisure.

"Lucubrationes viginti annorum."

CHAP. IX.

A King, whose Government is political, cannot change the Laws.

THE next thing, my Prince, at which you seem to hesitate, shall, with the same ease, be removed and answered, that is, whether you ought to apply yourself to the study of the *Laws of England*, or to that of the *Civil Laws*, for that the opinion is with them every where, in preference to all other human laws: let not this difficulty, Sir! give you any concern. *A King of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only regal, but political.* Had it been merely regal, he would have a power to make what innovations and alterations he pleased, in the laws of the kingdom, impose *tallages* and other hardships upon the people, whether they would or no, without their consent, which sort of government the *Civil Laws* point out, when they declare *Quod principi placuit legis habet vigorem:* but it is much otherwise with a king, whose government is *political*, because *he can neither make any alteration, or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions*, so that a people governed by such laws as are made by their own consent and approbation *enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other:* the same things may be effected

under an *absolute prince*, provided he do not degenerate into the *tyrant*.

Of such a prince, *Aristotle*, in the third of his *Politics*, says, "It is better for a city to be governed by a good man, than by good laws." But because it does not always happen, that the person presiding over a people, is so qualified, St. *Thomas*, in the book which he wrote to the king of *Cyprus*, (De Regimine Principum,) *wishes, that a kingdom could be so instituted, as that the king might not be at liberty to tyranize over his people; which only comes to pass* in the present case; that is, when the *sovereign power* is restrained by *political* laws. Rejoice therefore, my good Prince, that such is the law of that kingdom to which you are to inherit, because it will afford both to yourself and subjects, *the greatest security and satisfaction*.

With such a law, saith the same St. *Thomas*, all mankind would have been governed, if, in the Paradise, they had not transgressed the command of GOD. With the same was the whole nation of the *Jews* governed, under the *theocracy*, when GOD was their king, who adopted them for his peculiar people: till, at length, upon their own request, having obtained another sort of king, they soon found reason to repent them of their foolish and rash choice, and were sufficiently humbled under a *despotic* government: but, when they had good kings, as some there were, the people prospered and lived at ease; but when they were otherwise, their condition was both wretched and without redress. Of this you may see a particular account in the Book of the Kings. This subject being sufficiently discussed in a small piece I formerly drew up on purpose for your use, *concerning the Law of Nature*, I shall forbear at present to enlarge.

CHAP. X.

The Prince proposes a Question.

Prince. How comes it to pass, my Chancellor, that one king may govern his subjects in such an absolute manner, and a power in the same extent is unlawful for another king: seeing kings are equal in dignity, I am surprized that they are not likewise equal in the extent and exercise of their power.

CHAP. XI.

THE CHANCELLOR'S ANSWER.

The Chancellor for Answer refers the Prince to his Treatise concerning the Laws of Nature, where the aforesaid Question is handled at large.

Chancellor. I HAVE, Sir! in the small piece referred to, sufficiently made appear, that the king who governs by political rules has no less power than him, who governs his subjects at his mere will and pleasure; yet, that the authority which each has over their subjects is vastly different, I never disputed it. The reason of which, I shall, in the best manner I can, endeavour to explain.

CHAP. XII.

How Kingdoms ruled by regal Government first began.

FORMERLY, men who excelled in power, being ambitious of honor and renown, subdued the nations which were round about them by force of arms; they obliged them to a state of servitude, absolutely to obey their commands, which they established into laws, as the rules of their government. By long continuance and suffering whereof, the people, though

under such subjection, finding themselves protected by their governors from the violence and insults of others, submitted quietly to them, thinking it better to be under the protection of some government, than to be continually exposed to the ravages of every one, who should take it in their heads to oppress them. From this original and reason some kingdoms date their commencement, and the persons invested with the power, during such their government, *à regendo* (from *Ruling*) assumed and usurped to themselves the name of *Rex* (*Ruler* or *King*) and their power obtained the name of *Regal.*

By these methods it was, that *Nimrod* first acquired to himself a kingdom, though he is not called a king in the Scripture, but, *A mighty hunter before the Lord.* For, as an hunter behaves towards beasts, which are naturally wild and free; so did he oblige mankind to be in servitude and to obey him. By the same methods *Belus* reduced the *Assyrians;* so did *Ninus* by the greatest part of *Asia:* thus the *Romans* arrived at universal empire: in like manner kingdoms began in other parts of the world. Wherefore, when the children of *Israel* desired to have a king, as all the nations round about them *then* had, the thing displeased God, and he commanded *Samuel* to shew them the manner of the king who should reign over them, and the nature of his government; that is, mere arbitrary will and pleasure, as is set forth at large, and very pathetically, in the first Book of *Samuel.* And thus, if I mistake not, most excellent Prince, you have had a true account how those kingdoms first began, where the government is merely *Regal:* I shall now endeavour to trace the original of those kingdoms, where the form of government is *political;* that so, the first rise and beginning of both being known, you may more easily discern the reason of that wide difference which occasioned your question.

CHAP. XIII.

How those ruled by political Government first began.

ST. *AUSTIN*, in his book, *de Civitate Dei*, has it "That a people is a body of men joined together in society by a consent of right, by an union of interests, and for promoting the common good;" not that a people so met together in society can properly be called a body, as long as they continue without a head; for, as in the body natural, the head being cut off, we no longer call it a body but a *trunk;* so a community, without a head to govern it, cannot in propriety of speech be called a *body politic*. Wherefore, the *philosopher*, in the first of his *politics*, says, "Whensoever a multitude is formed into one body or society one part must govern, and the rest be governed." Wherefore, it is absolutely necessary, where a company of men combine and form themselves into a *body politic*, that some one should preside as the governing principal, who goes usually under the name of *King*.

In this order, as out of an embrio, is formed an human body, with one head to govern and control it; so, from a confused multitude is formed a regular kingdom, which is a sort of a mystical body, with one person, as the head, to guide and govern. And, as in the natural body (according to the *philosopher*) the heart is the first thing which lives, having in it the blood, which it transmits to all the other members, thereby imparting life, and growth and vigour; so, in the body politic, the first thing which lives and moves is the intention of the people, having in it the blood, that is, the prudential care and provision for the public good, which it transmits and communicates to the head, as the principal part; and to all the rest of the members of the said body politic, whereby it subsists and is invigorated.

The law, under which the people is incorporated, may be compared to the nerves or sinews of the body natural; for, as by these the whole frame is fitly joined together and compacted, so is the law that ligament (to go back to the truest derivation of the word, *lex à ligando*) by which the body politic, and all its several members are bound together and united in one entire body. And as the bones, and all the other members of the body preserve their functions, and discharge their several offices by the nerves; so do the members of the community by the law. And as the head of the body natural cannot change its nerves or sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood; *neither can a king, who is the head of the body politic, change the laws thereof, nor take from the people what is their's, by right,* against their consents.

Thus you have, Sir, the formal institution of every political kingdom, from whence you may guess at the power which a king may exercise with respect to the laws and the subject. *For he is appointed to protect his subjects in their lives, properties and laws; for this very end and purpose he has the delegation of power from the people; and he has no just claim to any other power but this.* Wherefore, to give a brief answer to that question of your's concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of *England* had its original from *Brute* and the *Trojans*, who attended him from *Italy* and *Greece*, and became a mixt kind of government, compounded of the *regal* and *political*. So *Scotland*, which was formerly in subjection to *England* in the nature of a dutchy, became a government partly *regal*, partly *political*.

Many other kingdoms, from the same original,

have acquired the same form of government; whence *Diodorus Siculus*, in his second book of Ancient History, concerning the *Egyptians*, says thus: "The kings of *Egypt* originally did not live in such a licentious manner as other kings, whose will was their law: but were subject to the same law, in common with the subject, and esteemed themselves happy in such a conformity to the laws." For, it was their opinion that many things were done by those who gave a loose to their own will, which exposed them to frequent and great dangers and disadvantages. The same author in his fourth book writes thus: "He who is chosen king of *Ethiopia* leads a life conformable to the laws, and behaves in every respect according to the customs of his country, neither rewarding, or punishing any one; but according to the laws handed down from his predecessors." In like manner he writes concerning the king of *Saba* in *Arabia Felix:* in the same manner concerning other kings in ancient history; who, pursuing the same methods of government, reigned prosperously and with reputation.

CHAP. XIV.

The Prince abridges what the Chancellor had been discoursing of in the two foregoing Chapters.

Prince. You have, my good Chancellor, with the perspicuity of your discourse, dispelled that darkness with which my understanding was obscured, and I now perceive plainly, that no nation ever formed themselves into a kingdom by their own compact and consent, with any other view than this, that they might hereby enjoy what they had, against all dangers and violence, in a securer manner than before: and consequently, they would find themselves disappointed of their intention, if afterwards the king they had so

set over them should despoil them of their properties, which was not lawful for any of the community to do before such appointment made. And the people would be in yet a more dismal state, in case they were to be governed by *strange* and foreign laws, such as they had not been used to, such as they could not approve of: more especially if those laws should affect them in their properties, for the preservation whereof, as well as of their persons, they freely submitted to kingly government; *it is plain, that such a power as this, could never originally proceed from the people; and if not from them, the king could have no such power rightfully at all:* on the other hand, I conceive it to be quite otherwise with that kingdom which becomes so by the sole authority and absolute power of the king. In this case, the people become subject to him upon no other terms, but to obey and be governed by his laws, that is, his mere will and pleasure. Neither, Sir, has it slipt my memory, what you have elsewhere, with solid reasons, demonstrated in your treatise, concerning the Law of Nature, that the power of both kings is in effect equal; seeing a possibility of doing amiss, which is the only privilege the one enjoys above the other, can be called an addition of power, no other than a possibility to decay or die; which, as it is only a possibility of being deprived of something valuable, such as life or health, is for this reason rather to be called a *state of impotency*, a real weakness. "For power (as *Boetius* observes) is always for some good end or purpose;" and therefore to be able to do mischief, which is the sole prerogative an absolute prince enjoys above the other, is so far from increasing his power, that it rather lessens and exposes it.

The *blessed spirits* above, which are already fixed in their seats of happiness, and put beyond a possibility of sinning, are, in that respect, superior to us in power,

who are always liable to do amiss, and to work iniquity with greediness. It only now remains to enquire, whether the law of *England*, to the study whereof you invite me, be as well adapted and effectual for the government of that kingdom, as the *Civil Law* (by which the *holy Roman Empire* is regulated) is generally thought to be, for the government of the rest of the world. Satisfy me but in this point by some clear and convincing proof; and I will immediately apply myself to the study you propose, without troubling you with any more of my scruples.

CHAP. XV.

All Laws are the Law of Nature, Customs or Statutes.

Chancellor. I OBSERVE, Sir, that you have given attention, and remember well what I have hitherto been discoursing upon, therefore you have the better title to receive an answer to your question. Know then, that all human laws are either the *Law of Nature*, *Customs*, or *Statutes*, which are also called *Constitutions:* but, the two former, when they are reduced into writing, and made public by a sufficient authority of the Prince, and commanded to be observed, they then pass into the nature of, and are accepted as *constitutions* or *statutes*, and, in virtue of such promulgation and command, oblige the subject to the observance of them under a greater penalty than otherwise they could do. Such are a considerable part of the *Civil Laws* which are digested in *great volumes* by the *Roman* Emperors, and by their authority commanded to be observed: whence they obtain the name of the *Civil Law*, in like manner as all other *imperial* edicts or statutes. If therefore, under these three distinctions of the *Law of Nature*, *Customs* and *Statutes*, the fountains and originals of all laws, I shall

prove the Law of *England* eminently to excel, then I shall have evinced it to be good and effectual for the government of that kingdom. Again, if I clearly make out that it is as well accommodated for the good of that State, as the *Civil Laws* are for that of the empire then I shall have made appear, that the Law of *England* is not only an excellent law, but that, in its kind, it is as well chosen as the *Civil Law.* In proof of this, I proceed.

CHAP. XVI.

The Law of Nature in all Countries is the same.

THE Laws of *England,* as far as they agree with, and are deduced from the *Law of Nature,* are neither better nor worse in their decisions than the laws of all other states or kingdoms in similar cases. For, as the *philosopher* says, in the fifth of his *Ethics,* "The Law of Nature is the same, and has the same force all the world over." Wherefore I see no occasion to enforce this point any farther; so now, the enquiry rests, what the customs and statutes of *England* are: and, in the first place we will consider and look into the nature of those customs.

CHAP. XVII.

The Customs of England *are of great Antiquity, received and approved of by five several Nations successively.*

THE realm of *England* was first inhabited by the *Britons;* afterwards it was ruled and civilized under the government of the *Romans;* then the *Britons* prevailed again; next, it was possessed by the *Saxons,* who changed the name of *Britain* into *England.*

After the *Saxons*, the *Danes* lorded it over us, and then the *Saxons* prevailed a second time; at last, the *Normans* came in, whose descendants obtain the kingdom at this day: and, during all that time, wherein those several nations and their kings prevailed, *England* has nevertheless been constantly governed by the same customs, as it is at present: which if they were not above all exception good, no doubt but some or other of those kings, from a principle of justice, in point of reason, or moved by inclination, would have made some alteration or quite abolished them, especially the *Romans*, who governed all the rest of the world in a manner by their own laws. Again, some of the aforesaid kings, who only got and kept possession of the Realm by the sword, were enabled by the same means to have destroyed the laws and introduced their own.

Neither the laws of the Romans which are cried up beyond all others for their antiquity; nor yet the laws of the *Venetians*, however famous in this respect, their Island being not inhabited so early as *Britain;* (neither was *Rome* itself at that time built;) nor in short, are the laws of any other kingdom in the world so venerable for their antiquity. So that there is no pretence to say, or insinuate to the contrary, but that the laws and customs of *England* are not only *good*, but the *very best.*

CHAP. XVIII.

How Statutes *are made in* England.

It only remains to be enquired whether the *Statute Law* of *England* be good or not. And, as to that, it does not flow solely from the mere will of one man, as the laws do in those countries, which are governed in a despotic manner; where sometimes the nature of the Constitution so much regards the single convenience

of the Legislator, whereby there accrues a great disadvantage and disparagement to the subject. Sometimes also, through the inadvertency of the Prince, his inactivity and love of ease, such laws are unadvisedly made as may better deserve to be called corruptions, than laws.

But, the *Statutes* of *England* are produced in quite another manner: *Not enacted by the sole will of the Prince, but, with the concurrent consent of the whole kingdom, by their Representatives in Parliament.* So that it is morally impossible but that they are and must be calculated for the good of the people: and they must needs be full of wisdom and prudence, since they are the result, not of one man's wisdom only, or an hundred, but such an assembly as the *Roman Senate* was of old, *more than three hundred* select persons; as those who are conversant in the forms and method of summoning them to *Parliament*, can more distinctly inform you. And, if any bills passed into a law, enacted with so much solemnity and foresight, should happen not to answer the intention of the legislators: they can immediately be amended and repealed, in the whole, or in part, *that is, with the same consent and in the same manner as they were at first enacted into a law.* I have thus laid before you, my Prince, every species of the Laws of *England*, you will of yourself easily apprehend their nature, whether they be good or not, by comparing them with other laws: and, when you will find none to stand in competition with them, you must acknowledge them to be, not only good laws, but such, in all respects, as you yourself could not wish them to be better.

CHAP. XIX.

The Difference between the Civil Laws and the Laws of England.

One thing only remains to be explained, concerning which you have raised some scruples, that is, whether the Laws of *England* are to be looked upon so useful, so well accommodated to the particular Constitution of *England*, as the *Civil Imperial Laws* are for that of the Empire. I remember a saying of yours, my Prince, that *comparisons are odious;* and therefore I am not very fond of making them: you will see better reasons whereby to form your judgment, and which of the two laws may deserve the preference, by considering wherein they differ, than by taking my opinion in the matter upon trust. Where they agree, they are equally praiseworthy; but in cases where they differ, that law which is the most excellent in its kind, after mature consideration, will eminently appear so to be: wherefore I shall produce some such cases, that you may weigh them in an equal balance, and thereby know for certain, which law is the more just and rational in its decisions: and first, I shall propose some instances of cases, which appear to me the most considerable.

CHAP. XX.

The first Case wherein the Civil Laws and the Laws of England *differ.*

Where any have a controversy depending before a Judge, and they come to a trial upon the matter of fact, which those who are skilled in the laws of *England*, term the *Issue of the Plea* in question: the issue of such plea, by the rules of the *Civil Law*, is to

be proved by the deposition of witnesses, and two witnesses are held sufficient: but, by the *Laws of England*, the truth of the matter cannot appear to the Judge, but upon the oath of twelve men of the neighbourhood, where the fact is supposed to be done. Now, the question is, which of those two ways of proceeding, so different, is to be esteemed the more rational and effectual for the discovery of the truth. That law which takes the best and most certain way of finding out the truth, is in that respect preferable to the other, which is of less force and efficacy: in the examination hereof, I proceed thus.

CHAP. XXI.

The Inconveniences of that Law which tries Causes by Witnesses only.

By the course of *Civil Law*, the party, who, upon the trial, holds the affirmative side of the question, is to produce his *Witnesses*, whom he is at liberty to name at his pleasure. On the other hand, a negative is incapable of being proved; I mean directly, though indirectly it is otherwise. Now, he may well be thought a person of an inconsiderable interest, and of less application, who, from the gross of mankind and all his acquaintance, cannot find out two, so devoid of conscience and all faith, who, through fear, inclination, affection, or for a bribe, will not be ready to gainsay the truth. So that the party, to make good his cause, is at his liberty to produce two of such a stamp; and if the other party had ever so much mind to object against them, or their evidence, it will not always happen that they are or can be known by the party, defendant in the cause, in order to call in question their life and conversation, that, as persons of a profligate character, they might be cross-

examined; upon which account their evidence might be set aside: and, seeing their evidence is in the *affirmative*, it is not so capable of being overthrown by circumstances, or any other indirect proofs.

Who then can live securely with respect to his life, or estate, under such a law which is so much in favour of any *one*, *who* has a mind to do mischief? And, what two wicked wretches have usually so little caution, as not to form to themselves beforehand a perfect story of the fact, about which they know they are to be examined, with every minute circumstance attending it, as if they had been true and real? "For, the children of this world (as our *Saviour* says) are in their generation wiser than the children of light." So, wicked *Jezebel* produced in judgment two witnesses, sons of *Belial*, to impeach *Naboth*, whereby he lost his life, and *Ahab* took possession of his vineyard. (1 Kings xxi. 11, 17.) Again, by the testimony of *two elders*, who were judges, *Susanna*, the virtuous wife of *Joacim*, had been put to death as an adulteress, had not GOD himself miraculously interposed to rescue her by a method so sudden and inconceivable, as carried the plain marks of inspired wisdom, and such as was far above the natural attainments of a *youth*, not yet arrived to maturity of years or judgment. For, though by varying in their evidence, he plainly convicted them to be false witnesses; yet, who but GOD alone, could have foreseen that they would thus have varied in their evidence? Since there was no law which obliged them to be so exact in every little circumstance, as to remember under what kind of tree the fact alleged was committed. For, the witnesses of any criminal action are not supposed to take notice of every bush, or other circumstance of place, which seemed to import nothing, either as to the detecting or aggravating of the crime. But, when those wicked judges, in such their wilful deposition, varied con-

cerning the species of the trees, their own words demonstrated that they had prevaricated and deviated from the truth, whereby they deservedly incurred the sentence of the law of *Moses*, according to which, they did unto them in such sort as they maliciously intended to do to their neighbour: and they put them to death.

You have, most gracious Prince! within your own memory, a remarkable instance, how much Justice may be perverted, in the case of Mr. *John Fringe:* who, after he had been in priests' orders for three years, was, by his own procurement, and the deposition of two false witnesses, (who swore that he had been formerly contracted to a certain young girl) compelled to quit his orders and to marry her: after cohabiting with her fourteen years, and having had by her seven children, being at last convicted of high treason against your highness, in the very article of death, and in the hearing of a multitude of people, he declared that those witnesses had been suborned by him, and that what they deposed was utterly false and groundless. Many like instances you may have heard of, where justice has been perverted by means of false witnesses; even under judges of the greatest integrity, as is notorious to those, who converse with and know mankind. This sort of wickedness, alas! is but too frequently committed.

CHAP. XXII.

Concerning Torture and putting to the Rack.

For this reason, the Laws of *France*, in capital cases, do not think it enough to convict the accused by evidence, lest the innocent should thereby be condemned; but they choose rather to put the accused themselves to *the Rack*, till they confess their guilt,

than rely entirely on the deposition of witnesses, who, very often, from unreasonable prejudice and passion; sometimes, at the instigation of wicked men, are suborned, and so become guilty of perjury. By which over cautious, and inhuman stretch of policy, the suspected, as well as the *really* guilty, are, in that kingdom, tortured so many ways, as is too tedious and bad for description. Some are extended on the *rack*, till their very sinews crack, and the veins gush out in streams of blood: others have weights hung to their feet, till their limbs are almost torn asunder, and the whole body dislocated: some have their mouths *gagged* to such a wideness, for a long time, whereat such quantities of water are poured in, that their bellies swell to a prodigious degree, and then being pierced with a faucet, spigot, or other instrument for the purpose, the water spouts out in great abundance, like a whale (if one may use the comparison) which, together with his prey, having taken in vast quantities of sea-water, returns it up again in spouts, to a very great height. To describe the inhumanity of such exquisite tortures affects me with too real a concern, and the varieties of them are not to be recounted in a large volume.

The *Civil Laws* themselves, where there is a want of evidence in *criminal* cases, have recourse to the like methods of torture for sifting out the truth. Most other kingdoms do the same: now, what man is there so stout or resolute, who has once gone through this horrid trial by torture, be he never so innocent, who will not rather confess himself guilty of all kinds of wickedness, than undergo the like tortures a second time? Who would not rather die once, since death would put an end to all his fears, than to be killed so many times, and suffer so many hellish tortures, more terrible than death itself? Do you not remember, my Prince, a criminal, who, when upon the rack, im-

peached (of treason) a certain noble knight, a man of worth and loyalty, and declared that they were both concerned together in the same conspiracy: and, being taken down from the rack, he still persisted in the accusation, lest he should again be put to the question. Nevertheless, being so much hurt and reduced by the severity of the punishment, that he was brought almost to the point of death, after he had the *Viaticum* and Sacraments administered to him, he then confessed, and took a very solemn oath upon it, by the body of Christ; and as he was now, as he imagined, just going to expire, he affirmed that the said worthy knight was innocent and clear of every thing he had laid to his charge: he added, that the *tortures* he was put to were so intolerable, that, rather than suffer them over again, he would accuse the same person of the same crimes; nay, his own father: though, when he said this, he was in the bitterness of death, when all hopes of recovery were over. Neither did he at last escape that ignominious death, for he was hanged; and, at the time and place of his execution, he acquitted the said knight of the crimes wherewith he had, not long before, charged him. Such confessions as these, alas! a great many others of those poor wretches make, not led by a regard to truth, but compelled to it, by the exquisiteness of their torments: now, what certainty can there arise from such extorted confessions; but, suppose a person falsely accused should have so much courage, so much sense of a life after this, as, amidst the terrors of this fiery trial (like the three young Jews of old, Dan. iii.) neither to dishonour GOD, nor lie to the damnation of his soul, so that the judge should hereupon pronounce him innocent: does he not with the same breath pronounce himself guilty of all that cruel punishment, which he inflicted upon such person *undeservedly?* And how *inhuman* must *that law* be, which does its utmost to condemn the innocent, and

convict the judge of cruelty? A practice so inhuman, deserves not indeed to be called a law, but the high road to hell.

O judge! in what school of humanity did you learn this custom of being present and assisting, while the accused wretch is upon the rack? The execution of the sentence of the law upon criminals is a task fit only for *little villains* to perform, picked out from amongst the refuse of mankind, who are thereby rendered infamous for ever after, and unfit to act, or appear, in any Court of Justice. God Almighty does not execute his judgments on the damned by the ministration of *angels*, but of *devils;* in *purgatory*, they are not *good spirits*, which torment and exercise souls, though predestinated to glory, but *evil spirits*. In this world, the wicked, by the permission of God, inflict the evil of punishment on sinners. For, when God said, (1 Kings xxii. 20.) "Who shall persuade *Ahab* that he may go up and fall at *Ramoth Gilead*," it was an *evil spirit* which came forth and said, "I will be a lying spirit in the mouth of all his prophets:" though God, for just reasons, had determined to suffer *Ahab* to be persuaded, and deceived by a lie, yet was it by no means becoming a *good spirit* to be employed on such an errand.

Perhaps, the judge will say, I have done nothing of myself in inflicting these *tortures*, which are not by way of punishment, but *trial;* but, how does it differ, whether he does it himself, while he is present on the bench, and, with reiterated commands, aggravates the nature of the crime, and encourages the officer in the execution of his office. It is only the master of the ship who brings her into port, though, in pursuance of his orders, others ply the steerage: for my own part, I see not how it is possible for the wound, which such a judge must give his own conscience, ever to close up or be healed; as long, at least, as his memory serves

him to reflect upon the bitter tortures so unjustly and inhumanly inflicted on the innocent.

CHAP. XXIII.

The Civil Law defective in doing Justice.

FURTHER, if a right accrues to a man to plead upon a trial, which arises from a *contract*, a *fact* done, a *title of inheritance*, or the like: in these cases, if either there were no witnesses at the first; or if they that were, are dead, the *plaintiff* will be obliged to drop his action, unless he can prove his right by such strong circumstantial proofs, as are not to be evaded, which seldom happens. Where lordships, and other possessions are in dispute; and in all other actions which fall under the jurisdiction of the *Civil Law*, the actions of the *plaintiffs* are very often rendered incapable of being brought to an issue for want of evidence, so that scarce one half of them can attain the end proposed: under what denomination then is that law to be ranged, which, where parties are injured, is so defective in making satisfaction. I question whether such a law can be called just, if that be true which this very law informs us, (viz.) "That justice gives to every one their due;" which such a law as this most certainly does not.

CHAP. XXIV.

The Division of Counties. Sheriffs and their Appointment.

IT being thus explained how the *Civil Laws* direct the judge concerning the truth of a fact, which is brought on to trial, it remains to be explained how the Laws of *England* boult out the truth of a fact,

when it comes in issue. The manner of proceeding in both laws being laid, and compared together, their qualities will appear the more eminently, according to that saying of the *philosopher*, "Opposites placed together give light to one another." But here, by way of introduction, and to borrow the rule or method used by orators, it may be necessary to premise some things, a right understanding whereof will help to let us into a more clear and distinct understanding of what follows: I proceed thus: *England* is divided into *Counties*, as *France* is into *Bailliwicks*, or *Provinces*, so that there is no place in *England*, which is not within the body of some *County:* counties are divided into *Hundreds*, which in some parts of *England* are called *Wapentakes*, and *Hundreds* again, are subdivided into *Vills*, under which appellation *Cities* and *Boroughs* are included.

The boundaries of those Vills are not ascertained by walls, buildings or streets; but, by a compass of fields, large districts of land, some *hamlets*, and divers other limits; as rivers, water-courses, wood-lands, and wastes of common, which there is now no occasion to describe by their particular names; because there is scarce any place in *England*, but what is within the limits of some Vill, though there be certain privileged places within Vills which are not reputed as parts or parcels of such Vills; farther, there is in every county a certain officer, called the King's *Sheriff*, who, amongst other duties of his office, executes within his county all mandates and judgments of the King's Courts of Justice: he is an annual officer; and, it is not lawful for him, after the expiration of his year, to continue to act in his said office, neither shall he be taken in again to execute the said office within two years thence next ensuing.

The manner of his election is thus: Every year, on the morrow of All-Souls, there meet in the King's

Court of *Exchequer* all the King's Counsellors, as well Lords spiritual and temporal, as all other the King's Justices, all the Barons of the Exchequer, the Master of the Rolls, and certain other officers, when all of them, by common consent, nominate three of every county *Knights* or *Esquires*, persons of distinction, and such as they esteem fittest qualified to bear the office of *Sheriff* of that county, for the year ensuing: the king only makes choice of one out of the three so nominated and returned. Who, in virtue of the King's Letters Patent, is constituted *High Sheriff* of that county, for which he is so chosen, for the year then next ensuing. But, before he can take upon him to act in consequence of the said Letters Patent, he shall swear upon the holy Evangelists, amongst other clauses, well, faithfully and indifferently to execute and do his duty for that year, and that he will not receive anything, under pretext or color of his said office, from any one, other than and except from the King's Majesty. This being premised, let us now proceed to those other matters which fall in with our present enquiry.

CHAP. XXV.

Jurors. How chosen and sworn.

WHENSOEVER the parties, contending in the King's Courts, are come to the *issue of the Plea*, upon the matter of fact, the justices forthwith, by virtue of the *King's Writ*, write to the *Sheriff* of the County, where the fact is supposed to be, that he would cause to come before them, at a certain day, by them appointed, *twelve good and lawful men* of the neighbourhood, where the fact is supposed, who stand in no relation to either of the parties who are at issue, in order to enquire and know upon their oaths, if the fact be so

as one of the parties alleges, or whether it be as the other contends it, with him. At which day the *Sheriff* shall make return of the said *Writ* before the same Justices, with a *panel* of the names of them whom he had summoned for that purpose.

In case they appear, either party may *challenge* the *array*, and allege, that the *Sheriff* hath acted therein partially, and in favour of the other party, (viz.) by summoning such as are too much parties in the cause and not indifferent; which exception, if it be found to be true upon the oath of two men of the same *panel*, pitched on by the *Justices*, the *panel* shall immediately be quashed, and then the Justices shall write to the *Coroners* of the same County, to make a new *panel;* in case that likewise should be excepted against, and be made appear to be corrupt and vicious, this *panel* shall also be quashed. Then the *Justices* shall choose two of the clerks in Court, or others of the same County, who, sitting in the court, shall upon their oaths, make an indifferent *panel*, which shall be excepted to by neither of the parties; but, being so *impanelled*, and appearing in Court, either party may except against any particular person; as he may at all times, and in all cases, by alledging that the person so *impanelled* is of kin, either by blood, or affinity to the other party; or in some such particular interest, as he cannot be deemed an indifferent person to pass between the parties: of which sort of exceptions there is so much variety, as is impossible to shew in a small compass: if any one of the exceptions be made appear to the Court to be true and reasonable, then he against whom the exception is taken, shall not be sworn, but his name shall be struck out of the *panel:* in like manner shall be done with all the rest of the *panel*, until twelve be sworn: so indifferent, as to the event of the cause, that neither of the parties can have reasonable matter of challenge

against them: out of these twelve, four, at the least, shall be *Hundredors*, dwelling in the *Hundred*, where the *Vill* is situate, in which the fact disputed is supposed to be: and every one of the *Jury* shall have lands, or revenues, *for the term of his life*, of the yearly value at least of *forty shillings*.

This method is observed in all actions and causes, *criminal*, *real* or *personal*; except where, in personal actions, the damages, or thing in demand, shall not exceed *forty marks English* money: because, in such like actions of small value, it is not necessary, nor required, that the Jurors should be able to expend so much; but they are required to have lands, or revenues, to a competent value, at the discretion of the Justices; otherwise they shall not be accepted; lest, by reason of their meanness and poverty, they may be liable to be easily bribed, or suborned: and in case, after all exceptions taken, so many be struck out of the *panel*, that there does not remain a sufficient number to make up the *Jury*, then it shall be given in charge to the Sheriff, by virtue of the *King's Writ*, that he add more *Jurors;* which is usually and often done, that the enquiry of the truth upon the issue in question may not remain undecided, for want of Jurors. *This is the form how Jurors, who enquire into the truth, ought to be returned, chosen and sworn in the King's Courts of Justice:* It remains to enquire and explain how they ought to be charged and informed as to their declaration of the truth of the issue before the n.

CHAP. XXVI.

How Jurors are informed by Evidences. The way of Proceeding in Civil Causes.

TWELVE good and true men being sworn, as in the manner above related, legally qualified, that is, having over and besides their moveables, possessions in land sufficient (as was said) wherewith to maintain their rank and station; neither suspected by, nor at variance with either of the parties; *all of the neighbourhood;* there shall be read to them in English, by the Court, the *Record* and nature of the plea, at length, which is depending between the parties; and the *Issue* thereupon shall be plainly laid before them, concerning the truth of which, those who are so sworn, are to certify the Court: which done, each of the parties, by themselves or their Counsel, in presence of the Court, shall declare and lay open to the *Jury* all and singular the matters and evidences, whereby they think they may be able to inform the Court concerning the truth of the *point in question;* after which each of the parties has a liberty to produce before the Court all such witnesses as they please, or can get to appear on their behalf; who being charged upon their oaths, shall give in evidence all that they know touching the truth of the fact, concerning which the parties are at *issue;* and, if necessity so require, the witnesses may be heard and examined apart, till they shall have deposed all that they have to give in evidence, so that what the one has declared shall not inform or induce another witness of the same side, to give his evidence in the same words, or to the very same effect.

The whole of the evidence being gone through, the *Jurors* shall confer together, at their pleasure, as they shall think most convenient, upon the truth of the issue before them; with as much deliberation and

leisure as they can well desire, being all the while in the keeping of an officer of the Court, in a place assigned them for that purpose, lest any one should attempt by indirect methods to influence them as to their opinion, which they are to give in to the Court. Lastly, they are to return into Court and certify the Justices upon the truth of the issue so joined, in the presence of the parties (if they please to be present) particularly the person who is plaintiff in the cause; what the *Jurors* shall so certify in the *Laws of England*, is called the *Verdict.* In pursuance of which *verdict*, the Justices shall render and form their judgment.

Notwithstanding, if the party, against whom such verdict is obtained, complain that he is thereby aggrieved, he may sue out a writ of *Attaint*, both against the Jury, and also against the party who obtained it; in virtue of which, if it be found upon the oath of *twenty-four men* (returned in manner before observed, chosen and sworn in due form of law, who ought to have much *better estates* than those who were first returned and sworn) that those, who were of the original *panel* and sworn to try the fact, have given a verdict, contrary to evidence, and their oath; every one of the first *Jury* shall be committed to the publick gaol, their goods shall be confiscated, their possessions seized into the King's hands, their habitations and houses shall be pulled down, their woodlands shall be felled, their meadows shall be plowed up, and they themselves shall ever thenceforward be esteemed, *in the eye of the Law*, infamous, and in no case whatsoever, are they to be admitted to give evidence in any *Court of Record:* the party, who suffered in the former trial, shall be restored to every thing they gave against him, through occasion of such their *false verdict:* and, who then (though he should have no regard to conscience or honesty) being so charged upon his oath, would not declare the truth from the bare apprehensions and

shame of so heavy a punishment, and the very great infamy which attends a contrary behaviour? and, if perhaps, one or more amongst them should be so unthinking or daring, as to prostitute their character, yet the rest of the *Jurors*, probably, will set a better value on their reputations than suffer either their good name or possessions to be destroyed and seized in such a manner.

Now, is not this method of coming at the truth better and more effectual, than that way of proceeding, which the *Civil Laws* prescribe? *No one's cause or right is, in this case, lost, either by death or failure of witnesses.* The *Jurors* returned are well known; they are not procured for hire; they are not of inferior condition; neither strangers, nor people of uncertain characters, whose circumstances or prejudices may be unknown. The *witnesses* or *Jurors are of the neighbourhood*, able to live of themselves, of good reputation and unexceptionable characters, not brought before the Court by either of the parties, but chosen and returned by a proper officer, a worthy, disinterested and indifferent person, and obliged under a penalty to appear upon the trial. They are well acquainted with all the facts, which the evidences depose, and with their several characters. What need of more words? there is nothing omitted which can discover the truth of the case *at issue*, nothing which can in any respect be concealed from, or unknown to a *Jury* who are so appointed and returned, I say, as far as it is possible for the wit of man to devise.

CHAP. XXVII.

The way of Proceeding in Capital Cases.

It becomes now absolutely necessary to inquire thoroughly how the Laws of *England* come at the truth in cases criminal; whereby the form of proceedings in both laws being made appear, we may the better judge, which law does most effectually discover the truth. If any suspected person who stands accused for felony or treason committed in *England*, denies the crime of which he stands accused, before his Judges: The Sheriff of the County where the fact is committed, shall cause to come before the same Judges *twenty-four* good and lawful men of the neighbourhood to the Vill where the fact was done, who are in no wise allied to the person accused, who have lands and revenues to the value of an *hundred shillings;* and they are to certify to the Judges upon the truth of the fact, wherewith the party is charged.

Upon their appearance in Court, as they come to the book to be sworn, before they be sworn, the person accused may *challenge* them, in the same manner as is above described, and as is usually done in *real actions.* Further, in favour of life, he may challenge *five and thirty;* such as he most feareth and suspecteth, who, upon such challenge shall be struck out of the *Panel*, or such marks set over against their names, that (to use the *term* in law) they shall not pass upon him in trial; and this *peremptorily*, without assigning any cause for such challenge; and no exceptions are to be taken against such his challenge: who then in *England* can be put to death unjustly for any crime? since he is allowed so many pleas and privileges in favour of life: none but his neighbours, men of honest and good repute, against whom he can have no probable cause of exception, can find the person accused, guilty.

Indeed, one would much rather that twenty guilty persons should escape the punishment of death, than that one innocent person should be condemned, and suffer capitally.

Neither can there be any room for suspicion, that in such a course and method of proceeding, a guilty person can escape the punishment due to his crimes; such a man's life and conversation would be restraint and terror sufficient to those who should have any inclination to acquit him: in a prosecution, carried on in this manner, there is nothing cruel, nothing inhuman; an innocent person cannot suffer in life or limb: he has no reason to dread the prejudices or calumny of his enemies, he will not, cannot, be put to the rack, to gratify their will and pleasure. In such a Constitution, under such laws, every man may live safely and securely. Judge then, good Sir! which law is rather to be chosen, putting yourself in the private capacity of a subject.

CHAP. XXVIII.

The Prince owns his Conviction, that the Laws of England *are much more commodious for the Subject as to the Proceedings in the above instances, than the Civil Law.*

To whom the Prince——I see no difficulty at all in the case, my good Chancellor, to make me hesitate, or waver as to the choice I am to make; particularly in the manner you require and propose. For, who would not rather live under a law which renders life secure and happy, than where the law is found insufficient for protection, and leaves a man defenceless, under a series of insults and barbarities from one's enemies? That man cannot in any wise be safe either in his life or property, whom his adversary (in

many cases which may happen) will have it in his power to convict out of the mouth of *two* witnesses, such as are *unknown*, produced in court and pitched upon by the prosecutor. And, though in consequence of their evidence, he be not punished with death, yet an acquittal will not leave him in a much better condition after *the question* has been put, which cannot but affect the party with a contraction of his sinews and limbs, attended with constant disorders and want of health.

A man, who lives under such a government, as you describe, lives exposed to frequent hazards of this sort: enemies are designing and desperately wicked. Witnesses cannot well bring about such a wicked device, when, what evidence they give in, must be in open Court, in the presence and hearing of a *jury*, of twelve men, persons of good character, neighbours where the fact was committed, apprised of the circumstances in question, and well acquainted with the lives and conversations of the witnesses, *especially as they be near neighbours, and cannot but know whether they be worthy of credit, or not: it cannot be a secret to every one of the Jury* what is done by, or amongst their neighbours. I know of myself more certainly what is a doing at this time in *Berry*, where I reside, than what is doing in *England:* neither do I think it possible that such things can well escape the observation and knowledge of an honest man, as happen so near to his habitation, even though transacted with some kind of secrecy. But, since these things are so, I admire very much, that the law of *England*, which in this respect is so commodious and desirable, should not obtain all the world over.

CHAP. XXIX.

The Reasons why Inquests are not made up of Jurors of Twelve Men in other Countries.

Chancellor. At the time your highness was obliged to quit *England*, you were very young, consequently the natural disposition and qualities of your native country could not be known to you; had the case been otherwise, upon a comparison of the advantages and properties of other countries with those of your own, you would not be surprized at those things which now agitate and disturb you. *England* is a country so fertile, that, comparing it acre for acre, it gives place to no one other country: it almost produces things spontaneous, without man's labour or toil. The fields, the plains, groves, woodlands, all sorts of lands spring and prosper there so quick, they are so luxuriant, that even uncultivated spots of land, often bring in more profit to the occupant, than those which are manured and tilled; though those too are very fruitful in plentiful crops of corn. The feeding lands are likewise enclosed with hedge-rows and ditches, planted with trees, which fence the herds and flocks from bleak winds, and sultry heats, and are for the most part so well watered, that they do not want the attendance of the *hind*, either day or night.

There are neither *wolves*, *bears*, nor lions in *England*; the sheep lie out a nights without their shepherds, penned up in folds, and the lands are improving at the same time: whence it comes to pass, that the inhabitants are seldom fatigued with hard labour, they lead a life more spiritual and refined: so did the *Patriarchs* of old, who chose rather to keep flocks and herds, than to disturb their peace of mind, with the more laborious employments of tillage and the like:

from hence it is, that the common people of *England* are better inclined and qualified to discern into such causes, which require a nice examination, than those who dwell upon their farms, and are constantly employed in husbandry affairs, whereby they contract a rusticity of understanding.

England is so thick-spread and filled with rich and landed men, that there is scarce a small village in which you may not find a *knight*, an *esquire*, or some substantial householder, commonly called, a *Frankleyne; all* men of considerable estates: there are others who are called *Freeholders*, and many *Yeomen* of estates sufficient to make a substantial Jury, within the description before observed. There are several of those *Yeomen* in *England* who are able to dispend by the year a *hundred pounds*, and more: *Juries* are very often made up of such, and, in causes of consequence, they consist of *knights*, *esquires*, and others, whose particular estates, in the whole, amount to upwards of *three hundred pounds* a year. Wherefore it is not to be imagined that persons, in such wealthy circumstances, can be suborned or prevailed on to perjure themselves; they are supposed to be restrained, not only through a religious principle, but also as they regard their honor and reputation, as they would avoid the very great scandal and detriment which must accrue by such behaviour; and further, lest the infamy should extend to and affect their heirs.

Other countries, my *Prince*, are not in such an happy situation, are not so well stored with inhabitants. Though there be in other parts of the world, persons of rank and distinction, men of great estates and possessions, yet they are not so frequent, and so near situated one to another, as in *England;* there is no where else so great a number of landowners: in a whole town, in any other country, you can scarce find a man of sufficiency enough to be

put upon a *Jury:* for, except in large cities and walled towns, there are very few, besides the nobility, who are possessors of estates, or immoveable goods, to any considerable value. The nobility do not keep in their hands any great scope of feeding-lands; it does not comport with their rank and quality to cultivate vineyards, or put their hands to the plough: and yet the main of their possessions consists in vineyards and arable lands, except some meadow grounds, which lie along the great rivers, and the woodlands; the pasture of which is in common to their tenants, and neighbours.

How can it then be, that in such countries a *Jury* can be made up of *twelve honest men of the neighbourhood*, near where any fact in question is brought on to trial; seeing they cannot be well called *of the neighbourhood*, who live at any remote distances? It will be very difficult to make up a *Jury* of twelve men, though remote from the place where the fact in question lies, after that the party accused shall have challenged his thirty-five peremptorily, who lived nearest to the place: wherefore in those countries they must make up a *Jury*, either of persons living at great distances from the place where the fact was committed; persons wholly unacquainted with the parties and their circumstances; or the *Jury* must consist of people of inferior rank, who have no proper notion, either of shame or infamy, who have no estates or characters to lose; so prejudiced and incapable in point of education, as to be able clearly to discern on which side the truth lies.

These things considered, you may cease, my *Prince*, your surprise, why that law, by means of which in *England* the truth is enquired into, is not in common to other countries, because other parts of the world cannot furnish *Juries* of so great sufficiency, or equally qualified.

CHAP. XXX.

The Prince commends the Laws of England *with respect to their Proceeding by Juries.*

Prince. THOUGH we have already agreed in it, that "comparisons be odious;" yet the *Civil Law*, as you have made out the comparison, and set forth the reasons, is delivered from all imputation of blame or defect: for, although you have preferred the Laws of *England* to it, yet the defect is not in the law itself; neither the *Civil Law*, nor the first legislators stand impeached: you have only demonstrated that the country, where it prevails, is the occasion of it; by means of which it does not so effectually get at the truth, in dubious cases, as the Laws of *England* do; that the Law of *England*, in the case just now discussed by you, is better accommodated for *England* than the *Civil Law*, is out of dispute; and we cannot have the least inclination to introduce the *Civil Law* instead of it: but this superior excellence of the Law of *England* does not happen through any blameable defect in the *other law;* but, as you say, the wealth and populousness of the country are the cause.

CHAP. XXXI.

Whether the Proceeding by Jury be repugnant to the Law of GOD, or not.

BUT, *my good Chancellor*, though the method whereby the Laws of *England* sift out the truth, in matters which are at issue, highly pleases me; yet there rests one doubt with me, whether it be not repugnant to Scripture: *Our blessed Saviour* says to the *Pharisees* (St. John viii. 17.) "It is written in your law that the testimony of two men is true."

And, in confirmation, he subjoins in the very next verse, "I am one that bear witness of myself, and the Father that sent me beareth witness of me." The *Pharisees* were *Jews;* wherefore it is the same thing to say, "It is written in your law," as to say, "It is written in the Law of *Moses*," which was no other than the Law of GOD, given by *Moses* to the children of *Israel;* wherefore to contradict this Law of *Moses*, is, in effect, the same as to contradict the *Law* of GOD; from whence it follows, that the Law of *England* deviates from this Law of GOD, which it does not seem lawful in any wise to impugn. It is written also (Matt. xviii. 16.) that *our Saviour*, speaking of offences, and forgiving one another, amongst other things, delivers himself thus, "If thy brother will not hear thee, then take with thee one or two more, that, in the mouth of two or three witnesses, every word may be established." Now, if in the mouth of two or three witnesses, GOD will establish every word; why do we look for the truth in dubious cases, from the evidence of more than two or three witnesses. No one can lay better or other foundation, than *our Lord* hath laid. This is what, in some measure, makes me hesitate concerning the proceedings according to the Laws of *England*, in matters of proof, wherefore, I desire your answer to this objection.

CHAP. XXXII.

The Chancellor's Answer.

Chancellor. THE Laws of *England*, Sir! *do not contradict these passages of Scripture* for which you seem to be so concerned; though they pursue a method somewhat different in coming at, and discovering the truth: how does that law of a *general council* prejudice or condemn the testimony of two

witnesses, whereby it is provided, that the *Cardinals* shall not be convicted of any crime, unless upon the deposition of twelve witnesses? If the testimony of two be true, *à fortiori*, the testimony of twelve ought rather to be presumed to be so. The rule of law says, "the more always contains in it that which is less." So, the repayment of whatsoever the host spent more than the two-pence, towards the taking care of the man who fell amongst thieves, was promised to be paid punctually to him by the *good Samaritan*, when he came again. Shall not an impeached person, who endeavours to prove himself to have been in another place at the time of the fact alleged and committed, be obliged to produce more than two or three witnesses, when the prosecutor has proved, or is ready to prove the charge by as many. So that person who takes upon him to convict any number of witnesses of perjury, must of necessity produce a greater number of witnesses against them; so that the testimony of only two or three witnesses shall not, in all cases, be presumed to be true.

But, the meaning of the law is this, that a less number than two witnesses shall not be admitted as sufficient to decide the truth in doubtful cases. And this appears from *Bernard*, (Extra. de testi. ca. licet in glossa ordinaria) where he puts many cases, in which, by the laws, more than three witnesses are required; in some cases, *five*, in others *seven*. And, that the truth in some cases may be proved *by two witnesses only*, when there is no other way of discovering it, is what the laws of *England* likewise affirm. As, where facts are committed upon the *high sea*, without the body of any County, which may be afterwards brought to trial before the *Admiralty-Court;* facts of this kind, by the Constitution of *England*, are to be proved by *witnesses*, without a *Jury*. In like manner are proceedings before the *Lord Constable*, and *Earl Marshal*,

upon a fact committed in another kingdom, so as the cognizance of it belong to the jurisdiction of the *Court of Chivalry.*

So, in the Courts of certain liberties in *England*, where they proceed by the *Law of Merchants*, touching contracts between *merchant* and *merchant*, beyond the seas, the proof is by *witnesses* only: because in such like cases, there is not of the neighbourhood a number sufficient to make up a *Jury* of twelve men: as in contracts and other cases arising within the kingdom is usually done. In like manner if a *deed*, in which witnesses are named, be brought into the Courts of law, process shall go out against such *witnesses*, who, together with a *Jury* shall enquire upon their oaths, whether it be the deed of that party, whose it is supposed to be. Wherefore, the law of *England* does not call in question any other law which finds out the truth by witnesses, especially when the necessity of the case so requires.

The Laws of *England* observe a like method, not only in the cases already put, but in some others, which it is not material now to enlarge upon: but it never decides a cause *only* by witnesses, when it can be decided by a *Jury* of twelve men, *the best and most effectual method for the trial of the truth*; and, in which respect, no other laws can compare with it. This proceeding is less liable to the hazard of bribery, subornation, or other sinister methods; *neither can this method* of proceeding in any case miscarry *for want of evidence:* what the witnesses give in upon oath cannot but have its due effect: neither can a *Jury* be perjured, but that for such their crime they must expect a very severe punishment, and the party thereby aggrieved is, and will be entitled to his remedy.

These things are not transacted at the will and pleasure of strangers, or parties wholly unknown, but upon the oaths of honest, considerable and creditable

men, who value their character, who are neighbours to the parties concerned, to whom there can be no cause of challenge or distrust as touching the *verdict* they shall give in.

Oh! what detestable villanies often happen from the method of proceedings by *witnesses only*. If a man contract matrimony in a clandestine manner, and afterwards before witnesses, betroth himself to another woman. In this case the *Contentious Court* will oblige him to consummate with this last woman; and the *Penitential Court* will adjudge him to cohabit with the first, if he be duly required thereto; and he will be obliged to do *penance* every time he shall be informed against for cohabiting with the other woman, to whom he was so betrothed; nay, though in both courts, one and the same man be the Judge. May one not say in the case before us, as it is written concerning the *Behemoth*, (Job xl. 17.) that indeed it is very intricate and perplexed. The person contracting shall never afterwards cohabit with either of the women, or with any other woman, without being prosecuted for so doing. A mischief of this kind cannot possibly happen in any case, according to the proceedings of the Law of *England*, though a *Behemoth* himself were solicitor in the cause. Are you not now convinced, *most excellent Prince*, that the more objections you raise against the Laws of *England*, the more amiable and resplendent they appear.

CHAP. XXXIII.

The Prince asks the Reason why some of our Kings have taken disgust at the Laws of England.

Prince. I AM convinced that the Laws of *England* eminently excel, beyond the laws of all other countries, in the case you have been now endeavouring to

explain; and yet I have heard that some of my ancestors, kings of *England*, have been so far from being pleased with those laws, that they have been industrious to introduce, and make the *Civil Laws* a part of the Constitution, in prejudice of the *Common Law;* this makes me wonder what they could intend by such behaviour.

CHAP. XXXIV.

The Chancellor's Answer.

Chancellor. You would cease to wonder, *my Prince*, if you would please seriously to consider the nature and occasion of the attempt. I have already given you to understand that there is a very noted sentence, a favourite maxim, or rule in the *Civil Law*, that, *That which pleases the Prince has the effect of a Law.* The Laws of *England* admit of no such maxim, or anything like it. A King of *England* does not bear such a sway over his subjects, as a King *merely*, but in a *mixed political capacity:* he is obliged by his Coronation Oath to the observance of the laws, which some of our kings have not been well able to digest, because thereby they are deprived of that free exercise of dominion over their subjects, in that full extensive manner as *those kings* have, *who* preside and govern by an *absolute regal power;* who, in pursuance of the laws of their respective kingdoms, in particular, *the Civil Law*, and of the aforesaid *maxim*, govern their subjects, change laws, enact new ones, inflict punishments, and impose taxes, at their mere will and pleasure, and determine suits at law in such manner, when, and as they think fit.

For which reason *your ancestors* endeavoured to shake off this *political* frame of government, in order to exercise the same *absolute regal dominion* too over their

subjects, or rather to be at their full swing to act as they list: not considering, that the power of both kings is really, and in effect equal, as is set forth in my aforesaid treatise, *de Natura Legis Naturæ*, viz. that it is not a restraint, but rather a liberty to govern a people by the just regularity of a *political* government, or rather right reason; that it is the greatest security both to king and people, and takes off no inconsiderable part of his royal care.

That this may the better appear, you will please to consult the experience you have had of both kinds of government; to begin with the *regal*, such as the king of *France* exercises *at present* over his subjects; and, in the next place, you will please to consider the effect of that *regal political government* which kings of *England* exercise over their subjects.

CHAP. XXXV.

The Inconveniencies which happen in France *by means of the Absolute Regal Government.*

You may remember, *most worthy Prince*, in what a condition you observed the villages and towns of *France* to be, during the time you sojourned there. Though they were well supplied with all the fruits of the earth, yet they were so much oppressed by the king's troops, and their horses; that you would scarce be accommodated, in your travels, not even in the great towns: where, as you were informed by the inhabitants, the soldiers, though quartered in the same village a month or two, yet they neither did nor would pay any thing for themselves or horses; and, what is still worse, the inhabitants of the villages and towns where they came, were forced to provide for them *gratis*, wines, flesh, and whatever else they had

occasion for; and if they did not like what they found, the inhabitants were obliged to supply them with better from the neighbouring villages: upon any non-compliance, the soldiers treated them at such a barbarous rate, that they were quickly necessitated to gratify them. When provisions, fuel and horse meat fell short in one village, they marched away full speed to the next; wasting it in like manner. They usurp and claim the same privilege and custom not to pay a penny for necessaries, either for themselves or women (whom they always carry with them in great numbers) such as shoes, stockings, and other wearing apparel, even to the smallest trifle of a lace, or point; all the inhabitants, wherever the soldiers quarter, are liable to this cruel oppressive treatment: it is the same throughout all the villages and towns in the kingdom, which are not walled. There is not any the least village, but what is exposed to the calamity, and once or twice in the year is sure to be plundered in this vexatious manner.

Further, the king of *France* does not permit any one to use *salt*, but what is bought of himself, at his own arbitrary price: and, if any poor person would rather choose to eat his meat without salt, than to buy it at such an exorbitant dear rate; he is notwithstanding compellable to provide himself with salt, upon the terms aforesaid, proportionably to what shall be adjudged sufficient to subsist the number of persons he has in family: besides all this, the inhabitants of *France* give every year to their king the *fourth part* of all their *wines*, the growth of that year, every vintner gives the *fourth penny* of what he makes of his *wines* by sale. And all the towns and boroughs pay to the king yearly, great sums of money, which are assessed upon them for the expences of his men at arms. So that the king's troops, which are always considerable, are subsisted and paid yearly by those

common people, who live in the villages, boroughs and cities.

Another grievance is, every village constantly finds and maintains two *cross-bow-men* at the least; some find more well arrayed in all their accoutrements, to serve the king in his wars, as often as he pleaseth to call them out; which is frequently done. Without any consideration had of these things, other very heavy taxes are assessed yearly upon every village within the kingdom for the king's service; neither is there ever any intermission or abatement of taxes. Exposed to these and other calamities, the *peasants* live in great hardship and misery. Their constant drink is water, neither do they taste, throughout the year, any other liquor; unless upon some extraordinary times, or festival days. Their clothing consists of *frocks*, or little short *jerkins* made of *canvass* no better than common sackcloth; they do not wear any woollens, except of the coarsest sort; and that only in the garment under their frocks; nor do they wear any trowse, but from the knees upward; their legs being exposed and naked. The women go barefoot, except on holidays: they do not eat flesh, unless it be the fat of bacon, and *that* in very small quantities, with which they make a soup: of other sorts, either boiled or roasted, they do not so much as taste, unless it be of the inwards and offals of sheep and bullocks, and the like, which are killed for the use of the better sort of people, and the merchants: for whom also quails, partridges, hares, and the like, are reserved, upon pain of the gallies: as for their poultry, the soldiers consume them, so that scarce the eggs, slight as they are, are indulged them by way of a dainty. And if it happen that a man is observed to thrive in the world, and become rich, he is presently assessed to the king's tax, proportionably more than his poorer neighbours, whereby

he is soon reduced to a level with the rest. This, or I am very much mistaken, is the present state and condition of the *peasantry* of *France.*

The nobility and gentry are not so much burthened with taxes. But if any one of them be impeached for a state-crime, though by his known enemy, it is not usual to convene him before the ordinary judge, but he is very often examined in the king's own apartment, or some such private place; sometimes only by the king's pursuivants and messengers: as soon as the king, upon such information, shall adjudge him to be guilty, he is never more heard of; but immediately, without any other formal process, the person so accused and adjudged guilty is put into a sack, and by night thrown into the river by the officers of the *provost-marshal*, and there drowned: in which summary way, you have heard of more put to death, than by any legal process. But still according to the Civil Law, "what pleases the prince has the effect of a law." Other things of a like irregular nature, or even worse, are well known to you, during your abode in *France*, and the adjacent countries; acted in the most detestable barbarous manner, under no colour or pretext of law than what I have already declared. To be particular would draw out our discourse into too great a length.

Now it remains to consider what effect that *political mixed government*, which prevails in *England*, has, which some of your progenitors have endeavoured to abrogate, and instead thereof to introduce the *Civil Law;* that, from the consideration of both, you may certainly determine with yourself which is the more eligible, since (as is above-mentioned) the *philosopher* says, "that opposites laid one by the other, do more certainly appear;" or, as more to our present argument, "happinesses by their contraries are best illustrated."

CHAP. XXXVI.

The Comparative Advantages in England, *where the Government is of a mixed Nature, made up of the Regal and Political.*

In *England* no one takes up his abode in another man's house, without leave of the owner first had: unless it be in *public inns;* and there he is obliged to discharge his reckoning, and make full satisfaction, for what accommodations he has had, ere he be permitted to depart. Neither is it lawful to take away another man's goods without the consent of the proprietor, or being liable to be called to an account for it. No man is concluded, but that he may provide himself with *salt*, and other necessaries for his family, when, how and where he pleases. Indeed the king, by his *purveyors*, may take for his own use necessaries for his household, at a reasonable price, to be assessed at the discretion of the *constables* of the place, whether the owners will or not: but the king is obliged by the laws to make present payment, or at a day to be fixed by the great officers of the king's household. The king cannot despoil the subject, without making ample satisfaction for the same: *He cannot by himself, or his ministry, lay taxes, subsidies, or any imposition, of what kind soever, upon the subject; he cannot alter the laws, or make new ones, without the express consent of the whole kingdom* in Parliament assembled: every inhabitant is at his liberty fully to use and enjoy whatever his farm produceth, the fruits of the earth, the increase of his flock, and the like: all the improvements he makes, whether by his own proper industry, or of those he retains in his service, are his own to use and enjoy without the lett, interruption, or denial of any: if he be in any wise injured, or oppressed, he shall have his *amends* and satisfaction

against the party offending: hence it is, that the inhabitants are rich in gold, silver, and in all the necessaries and conveniences of life. They drink no water, unless at certain times, upon a religious score, and by way of doing penance. They are fed, in great abundance, with all sorts of flesh and fish, of which they have plenty everywhere; they are clothed throughout in good woollens; their bedding and other furniture in their houses are of wool, and that in great store: they are also well provided with all other sorts of household goods and necessary implements for husbandry: every one, according to his rank, hath all things which conduce to make life easy and happy. They are not sued at law but before the ordinary judge, where they are treated with mercy and justice, according to the laws of the land; neither are they impleaded in point of property, or arraigned for any capital crime, how heinous soever, but before the king's judges, and according to the laws of the land.

These are the advantages consequent from that *political-mixed government* which obtains in *England:* from hence it is plain, what the effects of that law are in practice, which some of your ancestors, *kings of England*, have endeavoured to abrogate: the effects of that other law are no less apparent, which they so zealously endeavoured to introduce among us; so that you may easily distinguish them by their comparative advantages; what then could induce those kings to endeavour such an alteration, but only ambition, luxury, and impotent passion, which they preferred to the good of the State. You will please to consider in the next place, *my good Prince*, some other matters which will follow to be treated of.

CHAP. XXXVII.

Concerning the Regal Government, and the Political Government.

SAINT *Thomas*, in the book which he addresses to the king of *Cyprus* (de regimine principum) says, "*that a king is given for the sake of the kingdom, and not a kingdom for the sake of the king.*" Consequently all kingly power ought to be applied for, and to center in the good of the Kingdom or State: which, in effect, consists in the defence of the subject from the incursions of other nations, and in the protection of their lives and properties from injuries and violence as to one another.

A king who cannot come up to this character, is to be looked upon as *weak:* but if, through his own passions, poverty, or want of economy, he be in so distressed a condition, that he cannot keep his hands off from seizing on his subjects' property; by means whereof he so impoverishes them, that their estates are not sufficient to maintain both: in how much a more *impotent* despicable condition may we justly reckon such a prince to be, than if he were barely unable to defend them against the injuries of others? Such a prince, indeed, is not only to be called *weak*, but *weakness* itself; and is far from being a proper head of a *free people*, whilst he labours under such pressures and obligations.

On the other hand, he may well be esteemed a *free and powerful prince*, who can protect his subjects, against a foreign force as against one another: their properties are safe with respect to their neighbours and fellow-citizens, not liable to the oppression or depredation of any one: not even though the prince himself should have passions and occasions of his own to gratify: for who can be more *powerful* or

free than that prince who cannot only bring others within due bounds, but can also get the better of his own passions? which that prince can, and always does, who governs his people in the political way.

So that experience sufficiently shews you, *my Prince*, that those ancestors of yours, who were so much set upon abolishing the *political* form of government, had they been able to have compassed it, would not only have been disappointed of their aim and wish of enlarging their power thereby; but would, by this means, have exposed both themselves and the whole kingdom to far greater mischief and more eminent danger. Nevertheless, what we have shewn from the experience of the ill effects of a *despotic government*, which may seem to check and lessen the power of an *absolute prince*, do in reality rather proceed from a want of due care, and from misbehaviour, than from any defect in that law by which he governs. And therefore the *regal* power or dignity itself is not hereby lessened: since the power, whether of an absolute prince, or of one limited by laws (as I have evidently shewn in the aforesaid *Treatise* of the *Law of Nature*) is equal. But, that the power of an absolute prince is attended with much more difficulty in the exercise of it, and with less security both to king and people, the foregoing observations do, I think, sufficiently demonstrate. So that a wise prince would not wish to change the *political form* of government for an *absolute:* and for the same reason it is, that *St. Thomas* is supposed to wish, that all the kingdoms and nations of the world were governed in the *political* way.

CHAP. XXXVIII.

The Prince desires the Chancellor to proceed to other Cases wherein the Laws of England *and the Civil Laws disagree.*

Prince. You will, I hope, excuse it, *my Chancellor*, that while I have been proposing my doubts and queries, I have obliged you to digress so far from the main point. What you have explained by the way, has been very instructive, though it may have a little taken you off from your principal design; I now earnestly desire you, forthwith to proceed; and, as you at first set out and promised me, that you would please to declare some other cases, in the decision whereof the Laws of *England*, and the *Civil Law* of *Nations* observe a different method of procedure.

CHAP. XXXIX.

Concerning the Legitimation of Children born before Matrimony.

Chancellor. Sir! In obedience to your request, I will endeavour to lay before you some other cases, in which the laws aforesaid observe a different determination: which is preferable I will not take upon me to say, but shall leave it to your own judgment. "The Civil Law" legitimates children born before matrimony, as well as after, and qualifies them to succeed in the inheritance of the parents." The Law of *England* does not admit children born before matrimony to take by heirship. It calls such an offspring *natural*, but not *legitimate*. In the case before us, the *Civilians* extol their law, because they say, that it is an encouragement to marriage, by which the sin is done away, and so the souls of both parties are

preserved from damnation. They allege further, that the presumption is, that such was the intention of the parties, as it were, by way of contract, at the time of committing the act; the subsequent marriage demonstrates as much. Moreover, the Church admits and allows them for legitimate: these, I think, are the chief arguments, by which they justify and defend the *Civil Law.*

To this the learned in our Law reply, that the sin of *concubinage*, in the case proposed, is not purged by the subsequent marriage, though in some measure the punishment of the parties offending may be mitigated. They urge further, that the guilty in this case are the less penitent for their offence, in proportion as they find the laws more favourable to it, upon which consideration they likewise become more apt to repeated acts of this kind; and so act in contradiction both to the commands of God, and the ordinances of the Church. So that this law not only shares in the guilt of the offender by abetting such a practice, but is quite beside the nature and definition of a good law, "which (as has been already observed) is an holy sanction commanding things which are honest, and forbidding the contrary."

Now, the *Civil Law*, in the case before us, rather prompts on the party to do things which are dishonest. Nor is it a sufficient defence of this law, to say, that the Church admits such issue for legitimates. Since our holy mother the Church dispenses with many things which she does not allow of to be done. So the *Apostle* dissolved the restraint upon virgins, by way of dispensation; when, at the same time he advised the contrary, and would rather that all men were even as himself. And far be it that so good a mother should deny her compassion to her sons, whose case is so much the more deplorable, because they often fall into this sin, being betrayed by that

encouragement which the *Civil Law* allows it: and the subsequent marriage is a good argument to the Church, of their being truly penitent for what is past, and of their resolution to contain for the future.

The Law of *England* has a quite contrary effect: It does not give any encouragement to such a criminal action, neither does it screen the offenders, but lays a restraint upon them, threatens and inflicts a punishment, that they may not offend. The inclination is predominant enough in itself, without any other incitements, it rather wants a curb, the propensions to lust are very importunate and constant: and mankind, seeing they cannot be continued of and by themselves, naturally desire to be perpetuated in their species, which, without that, must be soon extinguished: every living creature has an inclination to be assimilated to the first cause, which is of a perpetual eternal duration: the sensation of contact, by which generation is effected, is a greater gratification than the sense of taste, which only preserves the individual.

Wherefore *Noah*, by way of punishment to his son, who had discovered his father's nakedness, cursed *Canaan* his grandson, and thereby aggravated his son *Ham*'s punishment more, than if he himself had been accursed: wherefore that law which punishes such an offspring, affects the sin with a severer penalty, than that which immediately affects the offender in his own person: now, I must leave it to you to judge, how truly and zealously the Law of *England* prosecutes a criminal amour. It is not content only to condemn the offspring to be illegitimate, but debars it from succeeding to the patrimony of the parents. Is not this a chaste law, a law of order, does it not more effectually discourage this sin, than the *Civil Law*, which remits the sin of fornication without exacting any punishment at all?

CHAP. XL.

The Reasons why Base-born Children are not in England *by the subsequent Marriage legitimated.*

BESIDES, the *Civil Law* says, that a natural son is the son of the people, concerning which a certain poet,

Cui pater est populus, pater est sibi nullus et omnis,
Cui pater est populus, non habet ipse patrem.

"He who has the people for his father seems to have no father at all, or rather every one: he who has the people for his father, has in reality no proper father." Since such an offspring, when born, had no father, how by any subsequent act he can have one, is not known in nature? A woman has by two several men two sons; one of the said men intermarries with her; which of the two sons is legitimated by such marriage? Opinion may prevail, but reason cannot decide; there was a time when both of them past in estimation for children of the people, or community; when neither knew nor had any other father: wherefore, it would seem inconsistent and unreasonable, that a son born afterwards of the same mother in lawful wedlock, whose original is confessedly known, should be debarred of his inheritance; and that either of the other two sons born out of marriage should take as heir: especially in *England*, where the eldest son, lawfully begotten, inherits to the lands: any indifferent person would judge it no less unreasonable, if a base-born child should have an equal share in the inheritance with one who is lawfully begotten. And by the *Civil Law*, the inheritance is divided amongst the male issue.

St. *Austin*, in his book (*de civitate dei*) has it, that *Abraham* gave all that "he had unto *Isaac*, but unto the sons of the *concubines* which *Abraham* had, *Abraham*

gave gifts." His observation is, that thereby it seems to be intimated that the inheritance of right does not belong to a *spurious issue*, but only a competent living. Thus St. *Austin;* and under the term (*spurious*) he includes all such children as are illegitimate, or born out of wedlock; as the holy Scriptures do likewise, which never give to any such the appellation of bastard. You see St. *Austin*, nay, and *Abraham* too, makes no small difference as to the succession of a spurious or legitimate offspring.

Further, another Scripture sets a mark of infamy upon all illegitimate children in the following metaphorical expressions; "the multiplying brood of the ungodly shall not thrive nor take deep rooting from bastard-slips, nor lay any fast foundation." The Church also does the same, by not admitting them into Holy Orders; or, if it dispenses with them thus far; yet, they are never permitted to enjoy any dignity or pre-eminence in the Church. It is but fit and reasonable therefore that human laws should deprive such persons of the privilege of succession: the *Scriptures* also, in point of birth, judge such inferior to those who are begotten in lawful marriage. *Gideon*, that mighty man of valour, is said to have had threescore and ten sons of his body begotten; for he had many wives, and but one son by his concubine, and yet this one son slew all his brethren, except *Jotham*, the youngest, who hid himself.

More wickedness is found to have been in that one bastard-slip, than in threescore and nine lawfully begotten. It is an old saying, If a bastard be good, it is mostly by accident, or special grace; if wicked, it is but his nature. An unlawful brood is thought to derive a corruption and stain from the transgression of the parent, without any concurrent fault of his own. So all of us have contracted a very great corruption from the sin of our first parents, though not of so

opprobrious a nature: the blemish with which *bastards* are affected, is widely different from that of legitimate children. The mutual culpable lust of the parents affects their offspring, which does not give itself such a loose in the lawful chaste embraces of the matrimonial life. The sin of fornicators is mutual, and in common; and as it bears a near resemblance therefore with the first sin, it leaves a worse impression on the issue than that of any other sin which men commit in private without any accomplice. So that a child so born, may rather be called the offspring of sin itself, than of the guilty persons.

Wherefore the wisdom of *Solomon*, distinguishing between a spurious and a legitimate offspring, of the latter says, "How beautiful is the offspring of the chaste and nuptial bed? The memory of it is immortal, being acknowledged both by GOD and man." Whereas the other is not so much as acknowledged amongst men; for which reason they are called the *children of the people*, or *community:* and of these the same *book of Wisdom* says, "children begotten of unlawful beds, are witnesses of wickedness against their parents in their trial." For being asked about their parents, they reveal their imperfections, as the wicked son of *Noah* did his father's nakedness. It is therefore thought that the man who was born blind, concerning whom the Pharisee said, "Thou wast altogether born in sins," that he was a *bastard*, and so, in that sense, born in sin: and when they add immediately, "and dost thou teach us?" They seem to intimate as if a *bastard* were not qualified by nature, like the issue of a lawful bed, either for knowledge, or for teaching others. Therefore that law does not rightly determine, which equals *bastards* with children lawfully begotten in the succession to the inheritance of their parents, when the Church judges them not duly qualified for Orders, or fit to preside in GOD's inheritance. The

Scriptures likewise put a wide distinction between them, as we have above observed: And *nature itself* makes a difference in her gifts, by setting as it were a natural mark or blemish on the natural children, though secretly impressed upon the mind. Which now of those two laws, in the case before you, do you hold with and give the preference to?

CHAP. XLI.

The Prince's Approbation of the Reasons given in the foregoing Chapter.

Prince. INDEED I give the preference to that law which does most effectually cast out sin, and establish virtue. I am also of opinion, that such are least entitled to the benefit of human laws, whom the Law of GOD judges unworthy, and whom the Church excludes from her orders and dignities, as being by nature more prone to wickedness.

Chancellor. I think you judge in the case very rightly. I will now recollect some other cases, wherein the *Civil* and *our* Laws disagree.

CHAP. XLII.

Concerning the Rule of the Civil Law: Partus semper sequitur Ventrem.

THE *Civil Laws* decree that the issue always follows the *venter*, that is, the condition of the mother: for example, if a *bond-woman* be married to a *free-man*, the children shall be *bond*. Again, if a *bond-man* marrieth a *free-woman* the children shall be *free:* by the laws of *England* "the issue does not follow the condition of the mother, but always that of the father:" so that a *free-man* begetteth *free children* whether he

be married to a *bond* or *free-woman*. So a *bond-man*, who is married, can beget none but *bond-children*.

Which law think you is more equal in its decision? Is not that a cruel law, which, without any fault of the party, adjudges the issue of the *free-man* to be *bond;* neither is that law deemed by some less cruel, which adjudges the issue of a *free-woman* to be *bond:* the *Civilians* say, that their laws give the best *determination* in the case; for they say, "A good tree cannot bring forth bad fruit, neither can a corrupt tree bring forth good fruit." And it has the consent of all laws, that every plant belongs to the soil where it is planted: the child also has a more certain knowledge of the mother who bore him, than of the father who begot him.

To this the *sages* in *our laws* reply, that a child lawfully begotten hath no more certain knowledge of the one parent than of the other; for both laws, however wide in other respects, agree in this, that he is the father whom the marriage declares so to be. Is it not more reasonable that the issue should follow the condition of the father, than that of the mother, since *Adam*, speaking of such as are joined in wedlock, says, "And they two shall be one flesh:" which *our Saviour*, in the *Gospel*, thus explains, "they are no more twain but one flesh." And forasmuch as the male comprehends the female, the whole flesh, so made one, ought rather to regard and to be referred to the male, as the more worthy. "Male and female created he them, and called their name *Adam*."

The *Civil Laws* themselves allow, that the woman always shines by reflexion from her husband, whence (C. Qui Professione se excusant L. nono L. fi.) the *text* has it, "We advance women by giving them the titles and honors of their husbands:" we honor them with the *sirnames* of our families. We proceed and decree for and against them in the Courts of law in the name

of the husband. We change their habitations: but in case they afterwards marry a man of inferior rank, they are deprived of their former honors, and follow the condition, as well as habitation, of the latter husband.

And since all the children, especially the sons, bear the name of the father, and not of the mother, whence can it be, that the son, in respect of his mother, should lose his rank and follow her condition, when, at the same time, he is known in law by the name of his father who begot him: nay, the woman is distinguished according to the rank and quality of her husband, neither of which can suffer diminution, or be sullied by any crime or base condition of the wife. That law ought to be accounted cruel and unjust, which, without any the least pretence or reason, leaves the son in a base condition.

Again, as to the inheritance, which the father (a free-man, lying under no imputation, crime or disability in law, whereby forfeitures accrue) has, with great care and industry, acquired for himself and family, that in the case before us the inheritance should pass into the possession of a stranger who took no pains in the acquisition thereof, seems very unjust. Further, the base condition of the child affects the father's name with the same blemish.

Again, that must needs be judged to be an hard and unjust law, which tends to increase the servitude, and to lessen the liberty of mankind. For "*human nature is evermore an advocate for liberty.*" GOD Almighty has declared himself the GOD *of liberty:* this being the gift of GOD to man in his creation, the other is introduced into the world by means of his own sin and folly; whence it is, that every thing in nature is so desirous of liberty, as being a sort of restitution to its primitive state. So that to go about to lessen this, is to touch men in the tenderest point:

it is upon such considerations as these, that the *Laws of England, in all cases, declare in favour of liberty.* True it is, where the father is a *bond-man,* though married to a *free-woman,* the child is, by *our laws,* in the same state of *bondage* with the father; nor is this unreasonable or unjust: for a woman who has undervalued herself by marrying a *bond-man,* is thereby made *one flesh* with him. In consequence of the laws above recited, she follows the condition of her husband, and by her own voluntary act hath put herself under subjection to him, having been before under no constraint of the law so to do. Those, who by act of law enter themselves *bond-men* in the king's Courts, or sell themselves into *bondage* without any compulsion are in the same case. How then can the laws make that son *free,* whom the mother, in the present instance, has so brought forth in her state of *subjection:* for no husband can ever be so much in subjection to his wife, let her be of never so high a rank or quality, as this woman hath made herself *subject* to her husband; whom, though a *bond-man,* she hath advanced to be her *lord,* according to the sentence of GOD himself, pronounced in *Holy Scripture,* "that every wife shall be in subjection to her husband, and he shall rule over her."

What the *Civilians* say concerning the fruit of a good or corrupt tree, is more to our purpose than to theirs; since every wife is either *bond* or *free,* according to the condition of her husband. And in whose soil (pray) does the husband plant, if not his own, when the wife is made *one flesh* with him? What if he hath grafted a slip of good kind upon a crab-stock, since the tree is his property, is not the fruit still his fruit, though it favour of the stock? So the children begotten of a woman are the husband's, whether the mother be *bond* or *free.* Nevertheless, by the laws of *England,* the lord of a *bond-woman, who* is married to a *free-man,*

without his consent first had and obtained, I say, in this case, though the lord cannot get her divorced *à vinculo matrimonii* (it being expressly said in the *Gospel*, "Whom God hath joined together let no man put asunder.") Yet he shall recover against the *freeman* all his damages which he hath sustained by reason of the loss of his *bond-woman*, and of the service which she owed him. This, I conceive, is the sum, substance and manner of proceeding according to the laws of *England*, in the case now declared. And now, *my Prince*, what is your opinion of the matter, and which of the two laws do you judge to be the most eligible?

CHAP. XLIII.

The Prince yields his Assent to the Chancellor, and disapproves of the said Rule.

Prince. THERE is no pretence in reason to doubt but that in this case the Laws of *England* excel the *Roman Imperial Laws:* and, for my own part, I always think that law most eligible, which shews more favour than severity to the parties concerned in it, and who are to be judged by it. For I remember an excellent *rule*, which says, "that matters of hardship are odious, and ought as much as possible to be restrained, but favours are to be amplified, and extended to their full extent."

Chancellor. With good reason. I will propound one case more, wherein the two laws differ, and then conclude; lest I prove tedious, whilst I expatiate upon the variety of more cases, and the difference each law observes in its decision; and so my discourse would be drawn out into such a length, as instead of entertaining, to disgust you.

CHAP. XLIV.

Concerning the Tuition of Orphans.

THE *Civil Laws* commit the *guardianship* of *orphans* to the next in blood, whether the relation be by the father's or mother's side, that is, to every one as he stands next in degree and order, to take by inheritance, in case the orphan die. The reason of this law is, "no one is presumed to take more care of, or to have a greater regard for the *orphan*, than he who is next in blood." The Laws of *England* determine quite contrary in the case. If an inheritance which is held in *socage* descend to an *orphan* from any relation by the father's side, such *orphan* shall not be in *guardianship* to any of his father's relations; but he shall be taken care of by the relations of his mother's side.

Again, if an inheritance descend to him from any relation by the mother's side: the *orphan* and such his estate shall be under the care and direction of the next akin by the father's side, and not otherwise, *until he come of age.* The law says, "to commit the care of a minor to him who is the next heir at law, is the same, as delivering up a lamb to the care of a wolf, that is, to be made a prey of." But if the inheritance be held by *knight's-service*, and not in *socage*, *then*, by the *laws of the land*, the minor and his estate shall not be under the management of his relations of either side; but both shall be under the care and direction of the *lord of the fee*, until he arrive to his complete age of one and twenty: who can be supposed better qualified to instruct him in deeds of arms, which, in virtue of his tenure, he is obliged to perform for the lord of the fee, than the lord himself, to whom such service is due from his minor; and who is supposed to have a superior interest to advance his ward in the world, in this and other parts of education, than any of his own relations or friends.

The lord, in order to have the better service from his tenant, will use his utmost care, and may well be thought better qualified to instruct him in this way, than his own relations, who, probably, in this respect are presumed, for the most part, wholly ignorant and unpractised; especially, if his estate be but a small one: what is or can be of greater use to a minor, who, in consequence of his tenure is obliged to venture his life and fortune, *if required*, in the service of the lord, than to be trained up in military discipline, whilst he is yet a minor. When he comes of full age, he cannot decline the nature of his tenure, but is obliged to do suit and service to his lord of whom he holds. Indeed, it will be of no small advantage to the kingdom, that the inhabitants be expert in arms; for the *philosopher* says, "every one behaves boldly in that way in which he knows himself to excel." Is not this law then, in your judgment, *my Prince*, to be preferred to the other already described?

CHAP. XLV.

Concerning the Education of the young Nobility during their Minority.

Prince. It is so; for in the first instance (as you observe) it provides with greater care and caution for the preservation of an *orphan*, than the *Civil Law* does: but I am much more pleased with the other part of it; because, by this means, our young nobility and gentry cannot so easily degenerate; but will rather, in all likelihood, go beyond their ancestors in probity and courage, and in every thing that is virtuous and praiseworthy, being brought up in a superior and more honorable family than that of their parents: nay, though their fathers may have had the good fortune to be educated in the like manner before,

yet the father's house, even with this advantage, cannot be compared to that of the superior lord; to whom both, in their turns, have been in *ward.* Princes of the realm, being under the same regulation, like as other lords, who hold immediately from the king, cannot so soon run into debaucheries, or a downright ignorance: because, during the time of their minority, they are brought up at the court. Upon which account I cannot but highly commend the magnificence and state of the king's palace, and I look on it as an *academy* for the young nobility of the kingdom to inure and imploy themselves in robust and manly exercises, probity and a generous humanity.—All which greatly tend to the reputation and prosperity of the kingdom, both at home and abroad; and make a great part of its security against invaders, and render it formidable both to its allies and enemies. This advantage could not accrue to the state, if the young nobility and gentry were to be brought up under the care and inspection of their own friends and relations, who are but persons of the same rank and quality with themselves. As to the sons of the *burghers*, and other *freeholders* in *socage tenure*, it cannot be prejudicial to the publick good, if they be brought up among themselves, with persons of their own degree, and though they be not bound to perform any military services; as, to any one who considers aright, may very plainly appear.

CHAP. XLVI.

Concerning open Theft, and private Theft.

Chancellor. THERE are some other cases in which the *Civil Law* and the *Common Law* of *England* differ. For instance: the *Civil Laws*, in case of a *manifest theft*, where a person is taken in the fact, adjudge the

criminal to restore fourfold, and for a theft which is not so manifest, where the proof is not so plain, the judgment is twice the value of the thing stolen. But the Laws of *England*, in either case, punish the party with death, provided the thing stolen, exceed the value of twelve pence. So in the case of persons who have been *bondmen*, and are set *free*, if afterwards they misbehave, and prove ungrateful, the *Civil Laws* adjudge them into slavery again. But, by the Laws of *England;* he who is once made *free*, is always so, let his behaviour afterwards be what it will. Other cases there are not a few, of this and the like kind, which, for brevity's sake, I pass over. In the two cases now propounded, I forbear to expatiate, or insist upon the superior excellence of the Laws of *England:* the properties of each law do not require such a nice examination: besides, I doubt not, your own good natural genius sufficiently distinguishes between them.

CHAP. XLVII.

The Prince passes on to an Enquiry why the Laws of England *are not taught in our Universities, and why there are not Degrees conferred on the Common Lawyers, as is usual in the other Professions.*

Prince. I THINK indeed that it requires no great labour or study, to determine these two points. For though in *England* felons of all sorts are every where punished with death; yet they still go on in defiance of all laws to the contrary: and, how much less would they abstain, if only a gentler punishment were threatened and inflicted? As for those who have obtained their *freedom*, it would be hard if they should always live under the lash, as it were; and, in fear of being again reduced to a state of slavery; especially upon the pretence or colour of *ingratitude*, since pre-

tences of this kind could never be wanting; the several instances and species of ingratitude being innumerable. "*Human nature, in case of liberty, demands greater favours than is usual in other cases.*" But, *my good Chancellor*, not to enter into the disquisition of any more cases of this sort, I beg you to inform me why the Laws of *England*, which are so useful, so beneficial and desirable, are not taught in our *Universities*, as well as the *Civil* and *Canon* Laws, and why the degrees of *Bachelor* and *Doctor* are not conferred upon the *Common Lawyers*, as is usually bestowed on those who are educated in other parts of learning.

CHAP. XLVIII.

The Chancellor's Answer.

Chancellor. In the *Universities* of *England* the sciences are taught only in the *Latin* tongue, whereas the *Laws of England* are writ in, and made up of, three several languages, *English*, *French* and *Latin*. *English*, as the *Common Law* has mostly prevailed, and been used among them; a great part of it being derived down from the old inhabitants, the *Angles*. *French*, because the *Normans* upon the coming in of *William*, called the Conqueror, and getting possession of the kingdom, would not permit our lawyers to plead but in that language which they themselves knew, and which the advocates of *France* use in their pleadings, and in their Parliaments.

In like manner the *Norman-French*, after their coming into *England*, would not pass any accounts of their revenues, save in their own native language, lest they should be imposed upon: even in their exercises and diversions, as *hunting*, *dice*, *tennis*, &c. they observed the same method: whence it has happened, that the *English*, from such their frequent

intercourse with the *French* have given in to the same custom; and to this very day, in their diversions, and their accounts, they speak *French:* in the Courts of Justice they formerly used to plead in *French*, till in pursuance of a *Law* to that purpose that custom was somewhat restrained, but not hitherto quite disused; first, by reason of certain *law terms*, which the pleaders express more aptly in *French* than in *English:* in the next place, because *Declarations* upon *Original Writs* cannot be formed so properly and agreeably to the nature of those Writs as in *French*, in which language the forms of such *Declarations* are learned and practised. Again, all pleadings, arguments and resolutions, which pass in the King's Courts are digested into books for the information of the young students, and are reported in the *French* tongue. Many *Acts of Parliament* are penned in *French*, from whence it comes to pass that the modern *French* is not the same with that used by our lawyers in the *Courts of Law*, but is much altered and depraved by common use: which does not happen to the *Law-French* used in *England*, because it is oftener writ than spoken: as to the *Latin*, all *Original* and *Judicial Writs*, all *Records* in the *King's Courts* of Justice, and some *Acts of Parliament* are penned in that language.

Wherefore the Laws of *England* being learned and practised in those three several languages, they cannot be so well studied in our Universities, where the *Latin* is mostly in use: but, they are studied in a publick manner and place, much more commodious and proper for the purpose, than in any University. It is situated near the King's Palace at *Westminster*, where the Courts of Law are held, and in which the *Law-Proceedings* are pleaded and argued, and the resolutions of the Court, upon cases which arise, are given by the Judges, men of gravity and years, well read and practised in the laws, and honoured with a degree

peculiar to them. Here, in *Term-Time*, the students of the law attend in great numbers, as it were to public schools, and are there instructed in all sorts of *Law-Learning*, and in the practice of the Courts: the situation of the place, where they reside and study, is between *Westminster* and the city of *London*, which, as to all necessaries and conveniences of life is the best supplied of any city or town in the kingdom: the place of study is not in the heart of the city itself, where the great confluence and multitude of the inhabitants might disturb them in their studies; but in a private place, separate and distinct by itself, in the suburbs, near to the Courts of Justice aforesaid, that the students, at their leisure, may daily and duly attend, with the greatest ease and convenience.

CHAP. XLIX.

The Disposition of the General Study of the Laws of England. *Of the Inns of Chancery, and the Inns of Court, and that they exceed in Number any of the Foreign Universities.*

But, *my Prince*, that the method and form of the study of the law may the better appear, I will proceed and describe it to you in the best manner I can. There belong to it *ten* lesser inns, and sometimes more, which are called the *Inns of Chancery:* in each of which there are an hundred students at the least; and, in some of them, a far greater number, though not constantly residing. The students are, for the most part, young men; here they study the nature of *Original* and *Judicial Writs*, which are the very first principles of the law: after they have made some progress here, and are more advanced in years, they are admitted into the *Inns of Court*, properly so called: of these there are four in number. In that which is the least

frequented, there are about two hundred students. In these greater inns a student cannot well be maintained under *eight and twenty pounds* a year: and, if he have a servant to wait on him (as for the most part they have) the expence is proportionably more: for this reason, the students are sons to persons of quality; those of an inferior rank not being able to bear the expences of maintaining and educating their children in this way. As to the merchants, they seldom care to lessen their stock in trade by being at such large yearly expences. So that there is scarce to be found, throughout the kingdom, an eminent lawyer, who is not a gentleman by birth and fortune; *consequently they have a greater regard for their character and honour than those who are bred in another way.*

There is both in the *Inns of Court*, and the *Inns of Chancery*, a sort of an *Academy*, or *Gymnasium*, fit for persons of their station; where they learn singing, and all kinds of music, dancing and such other accomplishments and diversions (which are called *Revels*) as are suitable to their quality, and such as are usually practised at Court. At other times, out of term, the greater part apply themselves to the study of the law. Upon festival days, and after the offices of the church are over, they employ themselves in the study of sacred and prophane history: here every thing which is good and virtuous is to be learned: all vice is discouraged and banished. So that knights, barons, and the greatest nobility of the kingdom, often place their children in those Inns of Court; not so much to make the laws their study, much less to live by the profession (having large patrimonies of their own) but to form their manners and to preserve them from the contagion of vice.

The discipline is so excellent, that there is scarce ever known to be any picques or differences, any bickerings or disturbances amongst them. The only

way they have of punishing delinquents, is by expelling them the society: which punishment they dread more than criminals do imprisonment and irons: for he who is expelled out of one society, is never taken in by any of the other. Whence it happens, that there is a constant harmony amongst them, the greatest friendship and a general freedom of conversation.

I need not be particular in describing the manner and method how the laws are studied in those places, since your Highness is never like to be a student there. But, I may say in the general, that it is pleasant, excellently well adapted for proficiency, and every way worthy of your esteem and encouragement. One thing more I will beg leave to observe, viz. that neither at *Orleans*, where both the *Canon* and *Civil Laws* are professed and studied; and whither students resort from all parts; neither at *Angiers*, *Caen*, nor any other University in *France* (*Paris* excepted) are there so many students, who have past their minority, as in our *Inns of Court*, where the natives only are admitted.

CHAP. L.

Of the State, Degree and Creation of a Serjeant at Law.

But, *my Prince*, since you are so desirous to know, wherefore, in the Laws of *England*, the degrees of Bachelor and Doctor are not conferred, as in the professions of the *Canon* and *Civil Law* in our Universities; I would give you to understand, that though in *our Inns of Court* there be no degrees which bear those titles; yet there is in them conferred a degree, or rather an *Honorary Estate*, no less celebrated and solemn than that of Doctor, which is called the degree

of a *Serjeant at Law*, it is conferred in the following manner.

The *Lord Chief Justice* of the *Common Pleas*, by and with the advice and consent of all the Judges, is wont to pitch upon, as often as he sees fitting, seven or eight of the discreeter persons, such as have made the greatest proficiency in the general study of the laws, and whom they judge best qualified. The manner is, to deliver in their names in writing to the Lord *High Chancellor* of *England;* who, in virtue of the *King's Writ*, shall forthwith command every one of the persons so pitched upon, that he be before the King, at a day certain, to take upon him the *state* and *degree* of a *Serjeant at Law*, under a great penalty, in every one of the said *Writs* specified and limited.

At which day, the parties summoned and appearing, each of them shall be sworn upon the holy Gospels, that he will be ready, at a further day and place to be appointed, to take upon him the *state* and *degree* of a *Serjeant at Law*, and that he shall, at the same time, give *gold*, as, according to the custom of the realm, has in such cases been used and accustomed to be done. How each is to behave and demean himself, the particulars of the ceremony, and manner how these estates and degrees are to be conferred and received, I forbear to insert; it will take up a larger description than consists with such a succinct discourse: besides, at other times, I have talked it over to you in our common conversation.

But I desire that you should know, that, at the time and place appointed, those who are so chosen, hold a sumptuous feast, like that at a *Coronation*, which is to continue for seven days together: neither shall any one of the new-created *Serjeants* be at a less expence, suitable to the solemnity of his creation, than *two hundred and sixty pounds*, and upwards, whereby the expences in the whole, which the eight will be at,

will exceed *three thousand two hundred marks.*—To make up which, one article is, every one shall make presents of gold rings to the value, in the whole, of forty pounds (at the least) *English* money.

I very well remember, when I took upon me the *state* and *degree* of a *Serjeant at Law*, that my bill for gold rings came to fifty pounds. Each *Serjeant*, at the time of his creation, gives to every Prince of the Blood, to every Duke, and to each Archbishop, who shall be present at the solemnity, to the Lord *High Chancellor*, and to the Treasurer of *England;* to each a ring of the value of twenty-six shillings and eight pence; to every Earl and Bishop, to the Keeper of the Privy Seal, to each Chief Justice, to the Chief Baron of the King's Exchequer, a ring worth twenty shillings; and to every other Lord of Parliament, to every Abbot and to every *Prelate of distinction*, to every worshipful Knight, then and there present, to the Master of the Rolls, and to every Justice, a ring to the value of one *mark;* to each Baron of the Exchequer, to the Chamberlains, and to all the great men at Court then in waiting on the King, rings of a less value, in proportion to their rank and quality: so that there will not be the meanest clerk, especially in the *Court of Common Pleas*, but that he will receive a ring convenient for his degree. Besides, they usually make presents of rings to several of their friends and acquaintance.

They give also *liveries of cloth*, of the same piece and colour, which are distributed in great quantities, not only to their *menial servants*, but to several others, their friends and acquaintance, who attended and waited on the solemnity of their creation; wherefore, though in the Universities, they who are advanced to the degree of Doctors are at no small expence at their creation, in giving *round caps*, and other considerable presents: yet they do not give any gold, or

presents of like value; neither are at any expences in proportion with a *Serjeant at Law.*

There is not, in any other kingdom or state, any particular degree conferred on the practisers of the law *as such;* unless it be in the kingdom of *England.* Neither does it happen, that in any other country, an *Advocate* enriches himself so much by his practice as a *Serjeant at Law.* No one, be he never so well read and practised in the laws, can be made a Judge in the Courts of *King's Bench*, or *the Common Pleas*, which are the supreme ordinary courts of the kingdom, unless he be first called to be *a Serjeant at Law:* neither is any one, beside a *Serjeant*, permitted to plead in the Court of *Common Pleas*, where all real actions are pleaded: wherefore, to this day, no one hath been advanced to the *state* and *degree* of a *Serjeant at Law*, till he hath been first a *Student*, and a *Barrister*, full sixteen years: every *Serjeant* wears in Court a *white silk coif*, which is a badge that they are *graduates in law*, and is *the chief ensign of habit* with which *Serjeants at Law* are distinguished at their creation. Neither shall a *Judge*, or a *Serjeant at Law*, take off the said *coif* though he be in the Royal Presence and talking with the King's Majesty. So that you will easily believe, *most excellent Prince*, that those laws which are so honoured and distinguished beyond the *Civil Laws*, or those of any other kingdom whatsoever, and the profession whereof is attended with so much solemnity and magnificence, are in themselves exceeding valuable, excellent and sublime, full of knowledge, equity and wisdom.

CHAP. LI.

Of the Judges of the Courts in Westminster-Hall, *the Manner of their Creation, Habit and Employment.*

THAT you may likewise know the estate of the *Judges*, as well as of the *Serjeants at Law*, I will, in the best manner I can, lay before you the method of their appointment, creation, and the nature of their office. There are usually in the Court of Common Pleas *five* Judges, *six* at the most; in the Court of King's Bench *four*, and sometimes *five:* when any one of them dies, *resigns*, or is superseded, the King, with the advice of his council, makes choice of one of the *Serjeants at Law*, whom he constitutes a Judge, by his *Letters Patents*, in the room of the Judge so deceased, resigning or superseded: which done, the *Lord High Chancellor* of *England* shall come into the Court where such vacancy is, bringing in his hand the said *Letters Patents;* when sitting on the bench, together with the Judges of the Court, he introduces the *Serjeant* who is so appointed to be a Judge; to whom, in open Court, he shall notify the King's pleasure concerning his succession to the vacant office, and shall cause to be read in publick the said Letters Patents: after which, the Master of the Rolls shall read to him the oath of office; when he is duly sworn into his said office, the *Chancellor* shall give into his hands the *King's Letters Patents*, and the *Lord Chief Justice* of the Court shall assign him his place where he is to sit, and makes him sit down in it.

But you must know, *my Prince*, that the Judge, amongst other parts of his oath, is to swear, that he shall do equal law and execution of right to all the King's subjects, rich and poor, without having regard to any person. Neither shall he delay any person of common right, for the letters of

the King, or of any other person, nor for any other cause, though the King by his express directions, or personal commands, should endeavour to influence and persuade the contrary. He shall also swear, that he shall not take by himself, or by any other, privily, nor apart, any gift or reward of gold, or of silver, nor of any other thing, the which might turn him to profit, unless it be meat or drink, and that of little value, of any man that shall have any plea, or process, depending before him, and that he shall take no fees, as long as he be Justice, nor robe of any person, great or small, in any case, but of the King himself.

You are to know moreover, that the Judge so created is not to make any solemn entertainment, or be at any extraordinary expence upon his accession to his office and dignity; because it is no *degree* in law, but only an office and a branch of magistracy, determinable on the King's good pleasure. However, from thenceforth, he changes his habit in some few particulars, but not in all: for when only a *Serjeant at Law*, he is clothed in a long robe, not unlike the sacerdotal habit, with a *furred cape* about his shoulders, and an hood over it, with two labels or tippets: such as the *Doctors of Law* use in some Universities, with a *coif*, as is above described. But after he is made a Judge, instead of the hood he shall be habited with a *cloak*, fastened upon his right shoulder; he still retains the other ornaments of a *Serjeant*, with this exception, that a Judge shall not use a party-coloured habit, as the *Serjeants* do, and his cape is furred with *minever*, whereas the Serjeant's cape is always furred with white lamb; which sort of habit, when *you* come in power, I could wish *your Highness* would make a little more ornamental, in honour of the laws, and also of your Government.

You are to know further, *that the Judges of England do not sit in the King's Courts above three hours in the day, that is, from eight in the morning till eleven. The Courts are not open in the afternoon.* The suiters of the Court betake themselves to the *pervise*, and other places, to advise with the *Serjeants at Law*, and other their counsel, about their affairs. The *Judges when they have taken their refreshments spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and other innocent amusements, at their pleasure: it seems rather a life of contemplation than of much action:* their time is spent in this manner, free from care and worldly avocations. Nor was it ever found that any of them has been corrupted with gifts, or bribes. And it has been observed, as an especial dispensation of Providence, that they have been happy in leaving behind them immediate descendants in a right line. "Thus is the man blessed that feareth the Lord."

And I think it is no less a peculiar blessing, that from amongst the Judges and their offspring, more Peers and great men of the realm have risen, than from any other profession or estate of men whatsoever who have rendered themselves wealthy, illustrious and noble by their own application, parts and industry. Although the merchants are more in number by some thousands; and some of them excel in riches all the Judges put together. This can never be ascribed to mere chance or fortune, which is nothing; but ought to be resolved (I think) into the peculiar blessing of Almighty God, who, by his Prophet, hath declared, that "the generation of the upright shall be blessed." And elsewhere the Prophet, speaking of the righteous, says, "their children shall be blessed." Wherefore, *my Prince*, be a lover of Justice, which maketh rich and honourable: which perpetuates the generation of those who love her: in order to this, be a zealous lover

of the *Law*, which is the *parent of Justice*, that it may be said, and verified of you, which is written of the righteous, "Their seed shall endure for ever."

CHAP. LII.

The Prince starts an Objection with Respect to the Delays in Law-Proceedings.

Prince. THERE remains but one thing, *my Chancellor*, to be cleared up, which makes me hesitate, and gives me disgust; if you can satisfy my doubts in this particular, I will cease to importune you with any more queries. *It is objected, that the Laws of England admit of great delays in the course of their proceedings, beyond what the laws of any other country allow of:* this is not only an obstruction to Justice but often an insupportable expence to the parties who are at law; especially in such actions where the *Demandant* is not entitled to his damages.

CHAP. LIII.

The Chancellor's Answer.

Chancellor. IN personal actions, which do not arise within the cities and trading towns (where they proceed according to usages and liberties of their own) the proceedings are in the ordinary way. Though they admit of great delays, yet they are not so excessive. Indeed in cities and towns, especially when the necessity of the case so requires, the process is speedy, as it is likewise in other parts of the world. But neither yet are the proceedings hurried on too fast (as it sometimes happens in other countries) by means whereof one or other of the parties is a sufferer.

In real actions, almost every where, the process goes on slow and tedious; but in *England* it is more expeditious. There are in *France*, in the Supreme Court of Parliament, some causes which have been depending upwards of thirty years. I myself know a case of appeal prosecuted in the said Court, which has been depending now these ten years, and it is likely will be so for ten years more before it can be decided. While lately at *Paris*, my host shewed me his process in writing, which had been before the Court of Parliament for eight years, for *four French Sols* rent, which, of our money, makes but *eight pence*, and he had no prospect of obtaining judgment in less than eight years more. I have known other cases of the same nature: and for what appears to me, the Laws of *England* do not admit of so great delays as the Laws of *France*. But it is really necessary there should be delays in legal proceedings, provided they be not too dilatory and tedious. By these means the parties, in particular the party prosecuted, is better provided with his proper defence, and advice of counsel, which otherwise neither of them could be, either to prosecute or defend. "Judgment is never so safe when the process is hurried on."

I remember once at an assizes and gaol-delivery at *Salisbury*, that I saw a woman indicted for the death of her husband, within the year: she was found guilty, and burnt for the same: in this case the Judge of assize, after the whole proceedings before him were over, might have respited the execution of the woman, even after the expiration of the year. At a subsequent assizes I saw a servant of the man who was so killed, tried and convicted before the same Judge for the same murder: who made an ample public confession that he was the only person who was guilty of the said fact, and that his mistress, who had been executed, was entirely innocent of it: wherefore he was drawn

and hanged, and at the time and place of his execution he lamented the case of his poor mistress, upon account of her innocence, and her being in no wise privy to her husband's death.

The fact being thus, how may we suppose the Judge to be affected with a sense of conscience and remorse for being so hasty in awarding judgment of execution, when it was in his power to have stayed, for some time, further process against her: he often owned to me, with concern, that he should never be able to satisfy it to his conscience for such his precipitate behaviour. Deliberation often brings judgment to maturity, which seldom or never happens where the proceedings are too much hurried on. Wherefore the Laws of *England* admit of *Essoins*, a sort of practice not known in the laws of other countries. Are not the *Vouchings to Warranty* of some use? The same may be said of the *Aids* of those to whom the reversion of lands belongs, who bring the title in question, and who have in their custody the evidences to make out the title of the lands. The same may be said of *Coparcenors*, who are to restore in proportion, if the estate allotted to one of them should be evicted: and yet these are all delays, as I have formerly informed you: even delays of this kind the laws of other countries do not allow: neither do the Laws of *England* favour such delays and imparlances as are frivolous and vexatious. And if, at any time, delays happen in pleading, which are found to be mischievous and inconvenient, they may be abolished, or reformed, in every parliament; nay, and all other laws used in *England*, where they do not answer the intention, or labour under any defect, may be corrected and amended in Parliament.

So that all the Laws of *England*, you will conclude from what has been said, must needs be very good, either in fact or possibility. They are either such

already, or are easily capable of being made such. And to this the kings of *England* are obliged, in virtue of a solemn oath taken at their coronation, as often as the necessity or equity of the case shall so require.

CHAP. LIV.

Conclusion.

Prince. I AM perfectly convinced from the whole tenor of your discourse, that the Laws of *England* are not only good, but the best of laws for the particular Constitution of *England.* And if at any time some of them want amendment, it may be easily done by application to, and in the way of Parliament: so that the kingdom either really is, or is easily capable of being governed by the best of laws: and I am of opinion that the points you have advanced in this discourse, and the just encomium you have given our laws, may be of some use to those who shall be hereafter kings of *England:* since no king can govern with pleasure by such laws as he is not pleased with, or does not rightly apprehend. "The unfitness of a tool disgusts the mechanic: and the bluntness of the lance or spear makes a dastardly soldier."

But as a soldier is animated to the battle when his arms are good, and himself expert in using them, according to *Vegetius*, who says, "that knowledge and experience in war breed and beget courage: and no one is afraid to do what he knows he can do well." So a king is animated and encouraged to do justice, when the laws, by which it is administered, are reasonable and just, and he has a sufficient knowledge of and experience in them. A general knowledge is sufficient for him, leaving it to his Judges to have a more exact and a more profound skill in them. So *Vincentius*

Beluacensis, in his book of *Moral Institution of Princes*, says, "that every Prince ought to have a general knowledge of the Holy Scriptures," which say, "that vain are all they in whom there is not the knowledge of GOD the Most High:" and it is written in the *Proverbs*, "let knowledge be in the lips of the king, and his mouth shall not err in judgment."

Yet a Prince is not obliged to so critical an understanding of the Scriptures; such as may become a Professor in Divinity; a general insight and acquaintance with them, as with the laws, is all that is necessary and required of him. Such had *Charlemaine;* such had *Lewis* his son; such had *Robert*, sometime king of *France*, and who was author of this conclusion ("*Sancti spiritûs adsit Nobis Gratia*") and many others, as the said *Vincentius*, in the 15th chapter of the same book, evidently shews. Wherefore the doctors of the laws do say, that "an emperor carries all his laws in the cabinet of his own breast." Not that he really and actually knows all the laws, but as he apprehends the principles of them, their method and nature, he may properly enough be said to understand them all. Moreover, he has it in his power to alter or abrogate them: so that all the laws are in him potentially, as *Eve* was in *Adam* before she was formed. But since, *my good Chancellor*, you have now performed what you undertook at first, and have fully persuaded me to apply myself to the study of the laws of my country, I will no longer detain you on this subject.

But, I now earnestly desire, that you will proceed, as you have formerly begun with it, to instruct me in the principles, method and nature of the Law of *England:* which law, I am resolved, shall be ever dear to me, preferably to all other laws in the world, which it as far surpasses, as the morning star exceeds the other stars in glory and brightness. Since the intention is answered wherewith you were moved to

this conference: time and reason require that we put an end to it. Rendering all due thanks and praise to Him who enabled us to begin, to carry on and finish it; even *Alpha* and *Omega*, the beginning and the end, the first and the last; and "let every thing that hath breath praise the LORD." *Amen.*

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OF

THE PRINCIPAL MATTERS TREATED OF IN THIS WORK.

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